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Minutes

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PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

- A. Meeting: Room 104 - Capitol Building  
Big Sky Room - Jorgenson's Holiday Motel
- B. Location: Helena, Montana
- C. Date: November 12, 1981
- D. Overall Objectives:

The purpose of the meeting was to establish the direction of study for the Commission. To set and approve the budget so that staff support for the Commission could be obtained. To determine what issues should be addressed and in what order.

E. Participants:

Chairman Francis Bardanoue  
Senator Fred Van Valkenburg  
Representative Calvin Winslow  
Senator Jan Wolf  
Jerry Driscoll  
Richard Ferderer  
Tom Schneider  
Percy Cline  
Don Robinson  
LeRoy Schramm  
Ray Schackelford

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Russ McDonald attended the meeting representing Gary Wicks. Nancy Hanson was excused from attending the meeting due to a previous commitment.

F. Decisions/Accomplishments:

Chairman Francis Bardanoue called the first meeting of the Personnel and Labor Relations Study Commission to order at 2:00 P.M., November 12, 1981. Roll call of the Commission members was taken and a quorum of the members was present. The meeting was opened for business.

Mr. Bardanoue gave a brief overview of the tasks before the Commission. Informal rules were established, but the Chairman must be addressed before a member may be granted the floor to speak. The Committee will act on business as a committee of the whole with no sub-committees. When the final Commission report is written for the Governor, minority reports will be included.

Dennis Taylor, Administrator of the Personnel Division, gave an overview of staff reports on the proposed issues for Commission study. The report involved 4 major issue areas:

1. Obtaining the Best Human Resources
2. Managing Human Resources for Maximum Effectiveness and Productivity

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3. Employee Compensation
4. Labor Relations

The four major areas were further divided into 16 issues. Joyce Brown of the Personnel Division presented the staff report on Obtaining the Best Human Resources involving the following issues:

- Issue #1 - Lack of Systematic Recruitment Planning
- Issue #2 - Lack of Cost/Effective Selection Procedures

Joyce also presented the staff report on the second report - Managing Human Resources for Maximum Effectiveness and Productivity - involving five issues:

- Issue #3 - Lack of Managerial and General Skills Training
- Issue #4 - Lack of Universal Performance Appraisal
- Issue #5 - Lack of Reward or Incentive Systems
- Issue #6 - Personnel Policies
- Issue #7 - Grievance Policy and Procedures

John McEwen presented the staff report on Employee Compensation. This report involved the following issues:

- Issue #8 - Classification Methodology
- Issue #9 - Multiple Classification and Pay Plans
- Issue #10 - The Pay Plan
- Issue #11 - Employee Benefits

Rodney Sundsted presented the staff report on the fourth report area - Labor Relations - involving five issues:

- Issue #12 - Role of the Board of Personnel Appeals
- Issue #13 - Collective Bargaining Responsibilities of the Legislative and Executive Branches
- Issue #14 - Impasse Resolution Methods
- Issue #15 - Dual Executive Branch/University System Bargaining Responsibility
- Issue #16 - Dispersed Public Sector Collective Bargaining Statutes

After the presentation on the first report Senator Wolf suggested all issues be presented with discussion after each area and after hearing all of the reports, the Commission would decide the order and direction of study to be followed. Members concurred.

Chairman Bardanoue mentioned for the record at this time that Russ McDonald should not vote on issues as he is not a standing member of the commission, but is sitting in for Gary Wicks.

Meeting recessed at 5:45 P.M. for dinner. The meeting reconvened at 7:00 P.M. in the Big Sky Room at Jorgenson's Holiday Motel. Senator Fred Van Valkenburg was unable to return to the meeting after dinner.

The Commission then rated the issue areas in the following order:

1. Issue #13 - Collective Bargaining Responsibilities of the Legislative and Executive Branches



2. Issue #12 - Role of the Board of Personnel Appeals
3. Issue #10 - The Pay Plan
4. Issue #8 - Classification Methodology
5. Issue #9 - Multiple Classification and Pay Plans
6. Issue #14 - Impasse Resolution Methods
7. Issue #15 - Dual Executive Branch/University Bargaining Responsibility
8. Issue #5 - Lack of Reward or Incentive System
9. Issue #16 - Dispersed Public Sector Collective Bargaining Statutes
10. Issue #7 - Grievance Policy and Procedure
11. Issue #4 - Lack of Universal Performance Appraisal
12. Issue #11 - Employee Benefits
13. Issue #6 - Personnel Policies
14. Issue #3 - Lack of Managerial and General Skills Training
15. Issue #2 - Lack of Cost/Effective Selection Procedures
16. Issue #1 - Lack of Systematic Recruitment Planning

After rating the issues the Commission discussed options in dealing with the issues. Tom Schneider made a motion to submit Issues 1 through 7 to the Personnel Division staff for written proposals to be brought back to the Commission in four months. Don Robinson seconded the motion. Motion carried.

In regard to Issue #13 - Collective Bargaining Responsibilities of the Legislative and Executive Branches -, Mr. Schneider made a motion that the staff prepare a research paper on methods other states are using to resolve this problem. Motion carried.

LeRoy Schramm made a motion to hold the next meeting for public suggestion on items to be studied, including those not previously listed. Motion carried with Senator Wolf opposed.

Senator Wolf made a motion that the next meeting be held on Issue #12 - Role of the Board of Personnel Appeals - with the meeting being set in two four-hour sessions. The first session to be held for Commission study of the research on the Board and the second session for public testimony.

LeRoy Schramm then offered a substitute motion to reconsider his motion on holding the next meeting solely for public testimony and accept Jan Wolf's motion. So carried.

The Commission directed the staff to prepare a report on the Board of Personnel Appeals; looking at their workload, grievance handling for the Department of Highways and the Department of Fish, Wildlife and Parks. Report to be sent to Commission members in advance of the next meeting so they might study the areas in advance. Report to be sent also to the Board of Personnel Appeals for comment.

Senator Wolf made a motion the next meeting to be held January 5, 1982. Motion carried.

Representative Winslow made a motion for the meeting to be held and issues addressed in the following order:

1. January - Issue #12
2. March - Issue #13



3. May - Issues #8 through 11
4. July - Issue #14
5. September - Issues 15 and 16
6. October - Public hearing

LeRoy Schramm amended the motion to leave off the months for later consideration, meet for study on issues 1 through 7 before meeting for issues 15 and 16, and hold a Public Hearing at a later date. Representative Winslow seconded the amended motion. Motion carried.

LeRoy Schramm moved to tentatively set meetings for the Commission to meet the first Tuesday of each month January through April. Tom Schneider seconded the motion. Motion carried.

Chairman Bardonouve called for nominations for a Vice-Chairman. LeRoy Schramm nominated Senator Jan Wolf. Second made by Tom Schneider. Senator Wolf elected by acclamation.

After much discussion, the Commission decided that substantial research direction to the staff had been provided and more direction could be provided at subsequent meetings.

LeRoy Schramm made a motion to approve the preliminary budget. Representative Winslow amended the motion to clarify any contracted services must be subject to Commission approval. Motion carried.

Meeting adjourned approximately 10:30 P.M.

#### G. Meeting Summary:

The Personnel and Labor Relations Study Commission established the direction to be followed in study and research, and the issues to be addressed over the next year. The budget was approved to allow for the hire of qualified staff to research the various areas and submit reports for Commission study.

#### H. Follow-up Action:

<u>Task</u>	<u>Who</u>	<u>When</u>
Issues 1 through 7 be researched and written proposal returned to Commission	Personnel Division	April 1982
Research information on methods other states have used to resolve problems with Issue #13	Commission Staff	March 1982
Prepare a research report on the Board of Personnel Appeals	Commission Staff	January 1982
Compile a mailing list of persons probably interested in Commission studies	Commission	January 1982

#### I. Handouts:

Agenda  
 Personnel Study Commission - Preliminary Budget  
 Summaries of Issue Areas and Statements





Report on the structure and functions of Central Personnel Administration in  
Montana

Pay Matrices

State Government Organizational Chart

Employee Handbook

Rating Sheet for Issues



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PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

- A. Meeting: 2nd Floor Conference Room  
Cogswell Building
- B. Location: Helena, Montana
- C. Date: January 5, 1982
- D. Overall Objectives:

To hear staff reports, presentations by the Board of Personnel Appeals and public testimony on the following aspects of Board of Personnel Appeals' operations: the Board's handling of employee grievances for two state agencies; the composition of the Board and its effect on voting patterns; timeliness of the Board's handling of unfair labor practice cases; the Board's handling of classification appeals; the scope of authority the Board assumes in handling labor relation cases and the accessibility of Board decisions.

E. Participants:

Chairman Frances Bardanouve  
Senator Fred Van Valkenburg  
Representative Calvin Winslow  
Senator Jan Wolf  
Jerry Driscoll  
Tom Schneider  
Nancy Hanson  
Don Robinson  
LeRoy Schramm  
Ray Schackelford  
Gary Wicks  
Richard Ferderer

Richard Ferderer was not able to attend the morning session due to car problems; Percy Cline was in an automobile accident and therefore was unable to attend; and Gary Wicks and Chairman Frances Bardanouve were delayed. Vice Chairman Senator Jan Wolf began the meeting in Chairman Bardanouve's absence.

All members of the Board of Personnel Appeals, Bob Jensen, the staff Administrator and David Hunter, Commissioner of Labor and Industry, were in attendance to make presentations and respond to the staff reports.

F. Presentations and Discussions:

Senator Jan Wolf called the second meeting of the Personnel and Labor Relations Study Commission to order at 8:50 a.m., January 5, 1982. Don Robinson moved to adopt the minutes as written and Tom Schneider seconded the motion. The meeting was opened for business.

Bob Jensen, Administrator of the Board of Personnel Appeals, was introduced along with the five members of the Board: Kelly Addey, Mary Jo Oreskovich, John Astle, Hank Lucci and Lloyd Markell.

Joyce Brown, Project Director, introduced the staff reports. Ms. Brown noted that in controversial areas where the Personnel Division and the Board of Personnel Appeals had opposing views, the staff reports concentrated on the views of the Personnel Division staff with the understanding that members of the Board and its constituents would be given an opportunity to present their views directly. The following staff reports were presented:

Staff Report #1 - STATE GRIEVANCE MECHANISMS AND THE ROLE OF THE BOARD OF PERSONNEL APPEALS.

The staff report presented by Gale Kuglin, Personnel Specialist of the Employee Relations Bureau, covered: current grievance procedures; the grievance appeal role of the Board of Personnel Appeals; the grievance appeal role of the Merit System Council; comments and problems identified with current grievance and appeals procedures; and grievance appeal procedures in other states.

The staff report presented the following options for the Commission's consideration:

Option 1: Leave current grievance and appeal procedures as they are currently constituted.

Option 2: Repeal the statutes providing appeal to the Board of Personnel Appeals for Highways, Fish, Wildlife and Parks, and to the Merit System Council for Merit System employees and provide no alternative.

Option 3: Expand the right of appeal to the Board of Personnel Appeals.

Option 4: Expand the right of appeal to the Merit System Council.

Option 5: Establish a new Grievance Appeals Board to hear all general non-union grievances.

Ms. Kuglin recommended that three additional pieces of information be obtained before the Commission makes any recommendations concerning grievance appeals:

1. Employee and management recommendations. (To be obtained through a survey.)
2. Information on what kinds of grievances can be appealed to District Court both in the absence and in the presence of an administrative appeals body. The advantages and disadvantages of handling these grievances administratively where possible.
3. More information on the characteristics of appeals procedures in other states that insure adequate review without unduly infringing on management prerogatives.

### Discussion:

In response to a question on how often the grievance process established by state policy is used, and whether department directors abide by the recommendation of the advisory hearings body, Ms. Kuglin indicated: "I don't have specific figures. It is our sense that it's not used very often." She also indicated she knew of one particular case in which there was a unanimous decision by the hearings committee and the department director reversed it.

When asked about negotiated grievance procedures, Rod Sundsted, the Labor Relations Bureau Chief for the Personnel Division, indicated that while there are a number of different negotiated grievance procedures, they all end in binding arbitration.

The importance of timely filing of grievances was discussed and Ms. Kuglin noted the Highway Department's feeling that not having some sort of limitation on the time period in which an appeal could be filed created definite problems because complaints could be filed three years after the fact.

It was also noted that the staff report was in error in indicating that the grievance appeals process for the Highway Department was established at the time of reorganization. The original Highway Commission heard employee grievances as required by statute. The Highway researcher assigned to the executive reorganization project simply recommended a shift of this function to the Board of Personnel Appeals.

In response to a question on whether an appeals body other than the Merit System Council would satisfy federal requirements for funding, Ms. Kuglin noted that the federal merit principle merely requires an impartial body to hear grievances. She consequently felt that, at least on initial reading of the principle, the Merit System Council as presently constituted would not have to be the appeals body.

Bob Jensen, staff Administrator for the BPA, was asked if the Board could act as the appeals body for all employee grievances. He indicated that he thought they would be able to expand their operation to handle grievances from all state agencies if the number of classification appeals continues to be reduced, perhaps with a relatively small increase in staff.

The Commission agreed that to adequately assess the options they would require additional information on the jurisdictional basis for getting into District Court by a non-union employee who is pursuing a grievance procedure.

### Staff Report #5 - THE BOARD OF PERSONNEL APPEALS AND THE CLASSIFICATION APPEALS PROCESS

The staff report presented by John McEwen, Chief of the Classification Bureau, covered: the statutory authority for the classification system; the appeals process; the procedural and policy

reforms in the appeals process; the major uncorrected problem - inconsistencies created by dual decision making by the Personnel Division and Board of Personnel Appeals; and two contributing factors to the major problem: (1) inability of the Board to conduct an informed review, and (2) the broad scope of review of the Board.

The staff report presented the following options for the Commission's consideration:

Option 1: Clarify and/or objectify the classification methodology so the BPA can make classification decisions that are consistent with the methodology.

Option 2: (a) Limit the scope of review of the BPA to specifically defined procedural issues such as arbitrary or capricious action, abuse of discretion, or clearly erroneous findings; and (b) delegate classification authority to the agencies and make the Personnel Division responsible for substantive review.

#### Discussion:

It was noted that, according to the staff report, the Classification Division itself is responsible for part of the difficulties experienced with the appeals process.

John McEwen, Chief of the Classification Bureau, confirmed that he does perceive the Division to be responsible for part of the difficulties. He noted that when the classification system was established, six people wrote fifteen hundred class specifications in eight weeks. An adequate job requires a staff person to spend several weeks on two or three class specifications. As a result of the original error of attempting to develop the classification system too quickly, the staff is still rewriting class specifications and many remain inadequate. Mr. McEwen also noted that the classification methodology was not yet documented before appeals were filed and is still not fully documented as a result of changes in methodology. He reiterated that these deficiencies make review by the Board more difficult.

Concern was also expressed over a provision of the report indicating that agencies are sometimes complicit in the appeals process - i.e. encourage employees to appeal so that the BPA, not the agency, is held responsible for resulting costs. Mr. McEwen estimated that this occurs in five to ten percent of all cases.

It was noted that the negotiated blue collar plan works well with few or no appeals. A question was asked as to why the same factors used in classifying blue collar jobs could not be used for other state jobs.

Mr. McEwen indicated that, while those factors were appropriate for blue collar jobs, they could not be used universally for all state jobs.

It was questioned whether the option of delegating classification to agencies might not create a hodge podge.

Mr. McEwen explained that several steps would be required to prevent that: (1) making sure agency personnel are fully trained; (2) making sure they have the tools (good class specifications/fully explained methodology); and (3) conducting post audits.

It was suggested that responsibility for classifications of higher level positions should perhaps be retained by the Classification Bureau to prevent agency personnel officers from classifying positions equal to or higher than their own.

In response to questions by several Commissioners on how Classification Bureau employees and hearing examiners are selected, the qualifications required and their handling of cases, Mr. McEwen indicated that the Board hired someone from the Personnel Division to increase their expertise. He also discussed the training process provided for his staff, indicating that new staff members receive several months of on-the-job training before they work independently.

Mr. McEwen explained the classification grievance process more fully, noting that staff members who investigate appeals are separate from those who made the original classification decision. These employees issue a finding that goes to the employee explaining the decision and criteria applied. If the decision is appealed to the BPA, the Personnel Division staff introduces position descriptions, class specifications and audit notes, and presents oral testimony explaining the process and how they applied the job evaluation criteria.

#### Staff Report #3 - EFFECTS OF BOARD OF PERSONNEL APPEALS' COMPOSITION ON VOTING PATTERNS

The staff report presented by Rod Sundsted, Chief of the Labor Relations Bureau, covered: statutory authority for the composition of the Board of Personnel Appeals and voting patterns of the Board.

The staff report presented the following information on voting patterns from January 1, 1975 to December 21, 1981 for the Commission's considerations:

- |                                   |   |             |
|-----------------------------------|---|-------------|
| - 18% of classification decisions | ) | made by 1   |
| - 28% of labor relation decisions | ) | vote margin |
| - 79% of classification decisions | ) | made        |
| - 67% of labor relation decisions | ) | unanimously |

Conclusion: This information does not substantiate the hypothesis that most of the decisions are being made by the neutral chair. The Board appears to be acting in unison to reach its decisions in the majority of cases.

#### Discussion:

The conclusion was questioned in light of the fact that 69.4% of all decisions were made by three members. It was suggested that the identities of all the decision-makers in each decision be analyzed before declaring that the neutral chair does not make a majority of the Board's decisions.

In response to this question, it was pointed out that the make-up of the decision-making members is equalized by law. The Board consists of two management representatives, two labor representatives and the neutral chair. For each management representative that is absent, the state definition of board quorum requires one union representative to abstain from voting, and vice versa. In this way, management and labor are equally represented; any three-vote decision will be made by one management representative, one labor representative and the neutral chair.

Included as an appendix to this report are articles by the Public Employee Relations Service dealing with the structure of state agency boards.

#### Staff Report #7 - PUBLICATION OF BOARD OF PERSONNEL DECISIONS

The staff report presented by Rod Sundsted, Chief of the Labor Relations Bureau, covered: steps taken by the Board to provide accessible labor relations guidance.

The staff report was concerned primarily with the publication of the Board's decisions. Although the Board did publish an index of its decisions and orders covering unfair labor practices and unit determinations for the years 1974-1976, funding for this publication has run out and no further funding is available. It is hoped that the sale of Volume I of this index will create a "self-funding" situation whereby subsequent index volumes may be published. Volume I has not been available long enough to determine the likelihood of self-funding.

#### Recommendation:

Wait a period of several months in order to assess the response to the sale of Volume I. If the response is not great enough to fund additional publications of the index, then some alternative funding may be found.

#### Discussion:

An assessment was requested concerning the specific question of the report: should Board of Personnel Appeal decisions be published?

The response was affirmative, adding that these decisions are what provides the guidance for future Board decisions and cases. Also stressed was the importance of the index of these decisions, which allows for easy retrieval of specific information.



In response to a question concerning alternative methods of retrieving information from past cases, it was pointed out that, aside from the index, the only other method would be to go through the cases individually.

#### GOVERNOR'S SPEECH

Gov. Schwinden expressed his appreciation to the Commission members for their participation in the study, along with his regrets that he couldn't attend the first meeting. Besides being needed, he noted that the study is timely, considering the current political atmosphere within the United States. He added that people are increasingly concerned about not only the cost of government, but also government's effectiveness in delivering services through employees in the public sector.

The Governor pointed out that when the initial classification and pay plan was instituted in Montana, there was a great concern that too much was being accomplished too fast, and that, in the future, a high price would be paid for this haste. Admitting that perhaps too much was being accomplished too fast, he added, "What has grown up now is in need not just of adjustments, but is in need of a deep look at the entire personnel system in state government to see if it doesn't need a dramatic overhaul." Concluding that the time is right for such a review, he added that the results may be just what the public is seeking.

Governor Schwinden noted that the so-called New Federalism will result in not only higher costs, but also greater responsibilities for all state governments. He went on to point out that fewer federal dollars will be around to assist with those responsibilities. "At the same time," he declared, "less expensive, yet more effective services are continuing to be demanded by people." The result, he said, is that some programs will be eliminated while others will need to be significantly phased back.

Concluding that the public now demands "less quantity and more quality," the Governor emphasized the role of the Commission to be one of "guidance" on how to "slim down and shape up." He added that the focus must be on public employees since that is where 4 out of every 5 taxpayer dollars go.

The Governor went on to cite several objectives of the Commission:

1. To determine how we can more effectively manage our present personnel resources;
2. To determine whether the system of personnel and labor relationships which have developed since the implementation of the pay and classification plan has gone awry: has it become too sluggish in addressing the inequities that exist within the state personnel labyrinth;

3. To present those recommendations which will enhance public confidence in the system.

In summary, Governor Schwinden challenged the Commission with the problem of how to assure private citizens that they are, in fact, receiving an accountability of their state employees. Admitting that the Commission's task is not one to be envied, the Governor expressed confidence in the Commission's expertise and the members' ability to overcome the considerable amount of conflicting evidence which will surely be presented. He added that one of the most important things he'd like to see come out of this study is "an increased credibility for the overwhelming number of state employees" who do perform their jobs in a first-class manner "without being properly rewarded for that effort."

The Governor again expressed his appreciation for the Commission's contribution toward achieving the ultimate goals of the study. He concluded by assuring the Commission members that they would have the full support of the executive branch "in not only helping you prepare your recommendations, but also in implementing those recommendations to the next session of legislature."

#### Staff Report #4 - TIMELINESS OF BOARD OF PERSONNEL APPEALS' HANDLING OF UNFAIR LABOR PRACTICE CASES

The staff report presented by Joyce Brown, Project Director of the Personnel and Labor Relations Study Commission, covered: time requirements governing Board of Personnel Appeals' handling of unfair labor practice cases; processing times for unfair labor practice cases heard over the past year; reforms of the Board of Personnel Appeals to increase the timeliness of Board decisions.

The staff report concluded that, while the Board issues a final order within five months of receiving final briefs and pleadings on the average, the Board exceeds the statutory five-month limit in more than half the cases (55%) reviewed.

Ms. Brown recommended that information on the time required to process cases be obtained later in the year to assess the effects of recent reforms on processing times that would not be reflected in the figures to date.

#### Discussion:

In response to a question concerning the imposed five-month limit, it was indicated that the Board members would most likely have to decide whether or not five months is a reasonable time limit.

Distinction was made between the unfair labor practice cases on which this report was based and classification cases. The question raised was whether or not classification cases also have a legislated time limit for processing. In response, it was reported that in June 1981, the Board adopted a rule granting the hearing examiner 90 days in which to write a decision.

Of primary concern was whether employees feel they are being short-changed by the delays in processing cases. One of the labor representatives indicated his continued opposition to any time limit in view of the variation in each cases' circumstances.

The Board, in general, was asked if justice is being denied by the prolonged processing of cases. The response made by one of the Board members was that everyone involved in the case - employer and employee alike - suffer from prolonged cases. His summary was, "justice delayed is justice denied," from either side's point of view.

#### Staff Report #6 - SCOPE OF AUTHORITY OF THE BOARD OF PERSONNEL APPEALS

The staff report presented by Rod Sundsted, Chief of the Labor Relations Bureau, covered: statutory parameters of the Board's authority; processes by which the Board's authority is established; areas of the BPA's operations in which client groups feel the Board has exceeded a desirable level of discretion or authority, or client groups feel a greater level of authority is needed.

Concerning BPA's handling of unfair labor practice cases, the staff report presented the following options for the Commission's consideration:

##### To eliminate joint BPA/judicial jurisdiction:

Option 1: Establish exclusive court jurisdiction over fair representation cases;

Option 2: Grant the BPA exclusive jurisdiction over fair representation cases.

##### To resolve the question of who should handle contract dispute cases which are also unfair labor practices:

Option 3: Continue the current practice of BPA acceptance of contract dispute cases which are also ULPs;

Option 4: Institute the Collyer principle or doctrine: deferral of contract violations which are also ULP complaints to binding arbitration where the contract provides for such.

##### To resolve the disparity in handling of unfair labor practices for public employees and nurses:

Option 5: Continue the current statutory provision vesting responsibility for unfair labor practice complaints for nurses in courts;

Option 6: Amend the Collective Bargaining for Nurses Statute to grant jurisdiction to the BPA for unfair labor practice complaints.

To resolve the issue of BPA handling of frivolous unfair labor practice cases:

Option 7: Continue the current BPA practice of scheduling all unfair labor practice cases for hearing;

Option 8: Amend the statute to permit (or seek an Attorney General's opinion interpreting the current statute to permit) dismissal of unfounded unfair labor practice cases by the BPA after a preliminary investigation.

Concerning the BPA's handling of unit determinations, the staff report presented the following options for the Commission's consideration:

Option 9: Leave in place the statute which provides the grandfather clause.

Option 10: Propose legislation to repeal the grandfather's clause.

Option 11: Issue a legislative directive to the BPA to prevent a proliferation of bargaining units in state government.

Option 12: Modify the collective bargaining statutes to include language balancing the needs of employees and employers or requiring broader units.

#### Discussion:

In response to a question on whether the case of the City of Livingston v. AFSCME case, which says that every contract violation is an unfair labor practice, Mr. Sundsted responded that, in his view, all contract violations are not unfair labor practices.

It was suggested that the Board of Personnel Appeals had, at one time, adopted the Collyer decision, but that the problem was that the Board just didn't want to follow it.

Expansion of BPA authority and the need to determine if the Board's authority should be limited was expressed.

One of the Commissioner's questioned the need to change the handling of fair representation cases since Montana procedures parallel national procedures - i.e. someone alleging a violation of the duty of fair representation can file either with the NLRB or District Court.

A second Commissioner noted that while our statutory language in this area differs from federal language, we have ended up in the right place.

The question of who would bear the cost of arbitration in Option 4 was asked. The response was that this cost was usually a negotiated item, generally ending up being a shared expense between employee and employer. Several individuals indicated that this is how the cost should be distributed rather than being carried by the public - i.e. the parties utilizing the services should be responsible for its cost. It was noted that an increased use of the arbitration process could also reduce the backlog of cases.

#### General response by Board of Personnel Appeals:

The first point stressed was the great amount of experience held by the members of the BPA, both in labor and management. Introductions and brief backgrounds were then presented. A history of the BPA was presented, which included the creation, original responsibilities, and subsequent responsibility of the BPA.

Several inquiries requesting clarification were made, followed by a question asking if BPA staff members should specialize in certain types of cases. The fear expressed was that staff members who are involved in adversary proceedings (ULPs) will not be perceived as neutral and will consequently be hampered as mediators. In response, it was pointed out that other states, possessing more members on their boards, did often specialize. However, the Montana BPA did not have the personnel required to allow specialization, particularly in light of the seasonability of mediation. However, the conflict in roles was recognized by the Board as a problem.

A question was raised concerning biases Board members bring to their decisions as a result of experiences and associations. The response was to cite the conclusion to Staff Report #3 indicating that neither management or labor representatives vote as a block. Board members noted that they have philosophies based on past experiences but no constituency. It was agreed that any Board member who may experience a conflict of interest should disqualify himself from the case.

A question concerning the neutrality of the neutral chair of the BPA was expanded to ask about the possibility of having five neutral members on the Board instead of just one. The Board's response was that it is beneficial to the entire decision making process to have opposing interests discussed by non-neutral members.

The questioning returned to the idea of conflicts of interest. The issue raised was whether conflicts might arise from the attachment of the BPA to the Department of Labor. Because the Commissioner of Labor and Industry hires the staff administrator, it was felt that influence could be exercised either through direct pressure or by hiring an administrator who would in turn hire other staff members of a particular bent. The respondent pointed out that similar situations exist within the Board of Natural Resources, the Board of Health, the Fish and Game Commission, and all the other quasi-judicial boards in Montana. Therefore, if concern for conflicts of interest exists with respect to the BPA, similar concern should be directed toward all of these boards. The Commissioner who raised the issue noted differences between the BPA and other quasi-judicial Boards.

Public Hearing: Testimony by Steve Otzenberger, Director of Personnel Services for Montana State University.

Two recommendations were made concerning the classification system from a user's point of view:

1. Local management must be able to understand and consistently apply the classification system. (The class specifications must be written in a manner whereby a supervisor may rationally assign a specific set of duties and responsibilities with confidence that the resultant grade level will not exceed the Department's ability to pay.)
2. The appropriate role of the BPA in classification matters should be reconsidered. The BPA's role should be to insure that each employee is accorded due process in the review of the classification assigned to his or her position.
3. The Personnel Division should be recognized as the final step of substantive review in the appeals process, subject to procedural review by the BPA.

Argument was made in favor of retaining a neutral substantive review. It was felt that without such a review, an employee may feel that he or she is not receiving a truly fair classification. Mr. Otzenberger explained that even without substantive review by the BPA there would be two levels of review: (1) an initial review by the agency involved and (2) a classification audit by the Personnel Division. In addition, an employee would have the opportunity to file an appeal of the classification, which would cause the case to be re-heard by both the local agency and the Personnel Division. It was also stressed that classification is not a science, but a judgment by trained, experienced people. The point was made that the BPA does not have the perspective of how the classification system has been applied to all positions statewide. The only information available during a BPA review is that which the two opposing parties present at the hearings, and this is not sufficient for a substantive classification decision.

Testimony by Thomas Gooch, Labor Relations Specialist for the Department of Institutions.

The point made was that the delineation between levels of function within a particular classification series is "absolutely terrible" in many instances.

Specific response by the BPA to the staff reports:

Staff Report #1: The BPA indicated that it took no position on whether the Board should continue to hear grievances for two state agencies only for all state agencies or for none. It was agreed that there was little logic in providing a grievance appeals

process for some state employees but not for others. The Board noted that one alternative to the BPA as a grievance appeals board is the Merit System Council, but questioned whether the Merit System Council would be suitable in its current form since it is not a quasi-judicial body.

It was noted that if a quasi-judicial grievance appeals body did not exist, the only alternative available to an employee would be district court, which requires attorneys fees and other related expenses.

#### Discussion:

The desirability of a consistent grievance procedure for all departments (not just the Highway Department and Fish, Wildlife and Parks) was generally recognized. A suggestion was offered that separate boards be established: one to administer the Public Employees Collective Bargaining Act and one to deal with classification appeals and grievance appeals. The reasoning behind the suggestion was that these are two totally different areas of expertise. The BPA response to this suggestion was that the BPA can handle cases in any of these areas if it is provided with "coquent arguments" at both the hearing examiner level and the appellate level.

Staff Report #5: The claim was made that the report missed the real issue. The real issue is whether there should even be a neutral body review of classification decisions. If the answer is "yes," then the BPA should not be expected to operate without certain inconsistencies that are present in all other lay boards of a similar nature. If "no," then the Commission should recommend that there should be no appeals procedure beyond the Personnel Division.

The "end run" issue identified by the report was also discussed. The assertion made was that the problem of the end-run (administrators encouraging employee appeals to bi-pass classification and budgetary constraints) would continue until a system is developed which will allow administrators to reward people for merit.

Due to the importance of the interrelationship between the appeals process and the classification system, it was recommended that judgements and/or decisions on the appeals process be delayed until at least after the March meeting, in which the methodology of classification will be discussed.

#### Discussion:

An inquiry was made into the appeals processes in other states, large local governments, or even the federal government. The respondent explained that while there were no appeals processes at the federal level and few at the local level, all but a relatively small percentage of states questioned have an appeals process. However, most states have a Personnel Commission which,



while attached to the Personnel Department, oversees the operations of the Personnel Department. Montana, on the other hand, is perhaps the only state in which the appeals function is administered by an agency separate from the Personnel Department.

A related question raised was why state governments are so different from other governments and private industry as to even need an appeals process. In a general response, it was indicated that Montana's appeals process is very liberal when compared to those of other states. It was also noted that Montana is still relatively new in the classification and appeals business, and that the liberal process was included in legislation establishing the classification system to minimize opposition to it.

A recommendation was made to have further research conducted on how other states handle their appeal processes and how liberal or narrow these processes are.

Questions were raised as to whether the BPA should be fully informed as to the "ripple effect" of its classification decisions and if so, whether the Board is currently provided with all the information necessary to understand the ramifications of a particular decision. The BPA responded that each case must be considered on its own merits, rather than holding to one definite rule or another. Any additional funding made necessary by an upgrade decision would become the responsibility of the department involved.

#### Staff Report #3 - EFFECTS OF BOARD OF PERSONNEL APPEALS' COMPOSITION ON VOTING PATTERNS

(No significant comments or questions.)

#### Staff Report #4 - TIMELINESS OF BOARD OF PERSONNEL APPEALS' HANDLING OF UNFAIR LABOR PRACTICE CASES

The BPA questioned whether the five-month limit on processing unfair labor practice (ULP) cases was realistic. It was noted that impasse resolution generally took precedent over ULP cases and could delay the process. It was also noted that ULPs filed by negotiating parties against each other are generally tactical and are not processed. Such cases are generally withdrawn after a settlement.

#### Discussion:

It was agreed that the BPA should not be used by negotiating parties, but BPA's approach to this ploy was questioned. Some felt that the BPA should not automatically set aside for later consideration all those cases that are filed during a negotiation process, since some could be meritorious.

#### Staff Report #6 - SCOPE OF AUTHORITY OF THE BOARD OF PERSONNEL APPEALS

The Board's remarks centered primarily around three topics of the report: the Collyer Doctrine, frivolous ULP cases, and the deter-



mination of bargaining units. In regard to the Collyer Doctrine, the Board claims it has not necessarily adopted or rejected the idea of turning all appropriate contract disputes over to arbitration.

The main point made concerning the Board's consideration of frivolous ULP cases was that cases are not known to be frivolous until they are considered. Also, a case that strikes one party as being frivolous may be anything but frivolous to another party. Therefore, frivolity cannot be established without a certain amount of initial consideration.

In reaction to Option 11 of the report, the Board argued that state government bargaining units are no different from city government or private sector units. Thus, state government bargaining units should not be forced into coalition bargaining simply because of the fragmentation within the units.

#### Discussion:

The primary line of questioning involved the Board's use of the Collyer Doctrine. One Board member spoke strongly in favor of BPA adoption of the doctrine; another member questioned the advisability of adopting it.

Also questioned was the Board's authority to dismiss a case in its early stages because it is deemed to be frivolous. It was suggested that if the Board had not already done so, it should give authority to the administrator to dismiss frivolous cases after a staff investigation. The BPA response was that even if the case is dismissed, this dismissal can then be appealed and the process reverts back to the Board.

#### Staff Report #7: PUBLICATION OF PERSONNEL DECISIONS

(No significant comments or questions.)

#### Conclusion:

In the end, the Commission asked the Board for its own recommendations on how to make it a better, more efficient Board. One of the forthcoming recommendations was to hire additional staff to assist the workload.

Because the Board had no other recommendations at the time, the members were asked to prepare a list of further recommendations which they would like to see initiated.

#### G. Decisions/Accomplishments:

The Commission decided to reverse the order of the March and April meetings - i.e. consider Impasse Resolution in March and Classification and Pay in April to allow more preparation time for the meeting devoted to classification and pay.

The Commission also decided to allow time at the beginning of each meeting for deliberation on the issues presented at the previous meeting. The Commission staff was directed to prepare a decision chart to aid the Commission in its deliberations and provide the Commission with any testimony submitted by mail.

The Division was authorized to expend up to \$500 in contracted services funds for a survey and report on the roles of the executive and legislative branches in collective bargaining in other states for the February meeting. The staff proposed to contract with Dick Olufs, Assistant Professor in the Public Administration program at the University of Montana for this service.

Other possible contracted services were discussed including flying in executive and legislative branch spokespersons from two or three other states to provide detailed information on how collective bargaining is handled in their state. It was determined that spokespersons from other states would not be invited until after the February meeting so the Commission could review the general practices in other states and decide what practices were of greatest interest. The staff was directed to draw up a list of possible spokespersons.

The possibility of contracting for an independent peer review and evaluation of the classification system was also discussed. Authority to approve expenditure of contracted services funds of up to \$500 was delegated to Chairman Francis Bardanouve.

#### H. Follow-Up Action

<u>Task</u>	<u>Who</u>	<u>When</u>
Prepare a research report on how classification appeals are handled in other states and jurisdictions.	Personnel Division	For the April meeting
Make a step-by-step presentation (case study) on how a classification is made and the appeal is handled.	Personnel Division	April Meeting
Prepare a research report on the kinds of grievances that could be adjudicated in district court in the absence and in the presence of an administrative grievance appeals board.	Personnel Division	-
Determine when the BPA is scheduled for a sunset review and obtain a copy of the sunset report if a review has occurred.	Personnel Division	For the February meeting

<u>Task</u>	<u>Who</u>	<u>When</u>
Prepare a research paper on the roles of the executive branch and legislative branch in collective bargaining in other states.	Consultant	For the February meeting
Develop recommendations on how to make the BPA a better, more efficient Board.	Board of Personnel Appeals	-
Prepare a decision chart.	Personnel Division	For the February meeting
Prepare a list of executive and legislative branch spokespersons from other states who have established various approaches to executive/legislative branch involvement in collective bargaining.		For the February meeting



Minutes

PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

- A. Meeting: 2nd Floor Conference Room  
Cogswell Building
- B. Location: Helena, Montana
- C. Date: February 2, 1982
- D. Overall Objectives:

To reach tentative decisions on previously reviewed study questions and hear staff reports, presentations by invited guests (including presentations by interested members of the legislative leadership, union leaders, agency directors and other interested parties) regarding the proper roles of the executive and legislative branches in collective bargaining, and the effect of two sets of negotiations - one for economic and one for non-economic contract items - on bargaining.

E. Participants:

Chairman Francis Bardanouve  
Senator Fred Van Valkenburg  
Senator Jan Wolf  
Jerry Driscoll  
Tom Schneider  
Nancy Hanson  
Don Robinson  
LeRoy Schramm  
Ray Shackleford  
Gary Wicks

Representative Winsolow and Mr. Ferderer were not able to attend. Ms. Hanson was delayed. The following legislative leaders and members of the Select Committee on Employee Pay were in attendance part of the day as invited guests to present testimony:

Senator Chet Blaylock  
Representative Gene Donaldson  
Representative Bob Marks  
Representative Barbara Spilker

F. Meeting Proceedings:

Chairman Bardanouve called the third meeting of the Personnel and Labor Relations Study Commission to order at 9:00 a.m., February 2, 1982. Joyce Brown introduced the new staff: John Balsam, Researcher with an M.B.A. from the University of Montana, and Susan Richardson, Secretary. Corrections in the minutes of the January 5th meeting were the spellings of two names - John Kelly Addy and Hank (Francis J.) Raucci. Chairman Bardanouve corrected his first name to Francis. It was moved that the minutes be accepted as corrected and the motion was carried.

It was noted that all the written testimony from participants in the January 5, 1982 meeting had not been received by the Commissioners. Joyce Brown stated that the other testimony would be mailed to them.

#### Executive Session

At 9:15 a.m. the Commission went into executive session for the purpose of deliberating on study questions #1, 3, 4, 5, 6 and 7. Mr. Schramm asked if the Study Commission was aiming for recommendations on these questions today. Chairman Bardanoue responded "yes," with the comment that decisions should be made to prevent a pile-up of work. Decision charts prepared by the Commission staff were used to focus the discussion.

#### Study Question 1 - What Type of Grievance Appeal Mechanism Should the State Have?

Mr. Schneider moved that the Commission recommend a uniform grievance mechanism for state employees incorporating the statutory appeal processes of the Highway Department and Fish, Wildlife and Parks into one with all other state agencies before the Board of Personnel Appeals.

In response to a suggestion that the issues of a uniform procedure and the appropriate appeal board be separated, Mr. Schneider agreed and revised his motion. He moved to recommend a uniform statewide grievance mechanism incorporating grievances for Fish, Wildlife and Parks and the Highway Department.

In the ensuing discussion, the following points were covered: It was noted that creation of a single grievance appeals process would require legislation. Dennis M. Taylor, Administrator of the Personnel Division, indicated that the staff could prepare a draft of the legislation and the Legislative Council would review it and have it ready for pre-filing if the Commission decided on that course of action. Chairman Bardanoue noted bills which are pre-filed before the legislature can be reviewed by the public.

Mr. Schneider noted and everyone agreed that a consolidated grievance procedure would not affect grievance procedures established by contract; it would affect unorganized state employees. One Commissioner expressed the need for information on what personnel issues are being appealed to District Court to better assess the need for an appeal process.

After completion of discussion, Senator Wolf seconded Mr. Schneider's revised motion, the question was called, and a roll call vote was taken. The motion carried with 8 votes in the affirmative; Senator Van Valkenburg and Mr. Driscoll dissented. Mr. Driscoll indicated that he felt that the legislature would not adequately fund an appeals process and a backlog would be created. Senator Van Valkenburg was not convinced of the need for a uniform procedure since only two agencies have separate procedures. One of the Commissioners noted that, contrary to the common perception, there are presently seventeen different grievance procedures - each department having its own method although most ended with a decision by the department director.

For purposes of discussion, Mr. Schneider then moved that the Board of Personnel Appeals act as the grievance appeals body.

Several objections were raised to this motion: It was noted that if uniformity is to be achieved, some kind of action would be required on the Merit System Council which hears grievances of merit system employees. It was also felt that the Board of Personnel Appeals should not be assigned additional functions unrelated to labor law - that mastery of this substantial body of law was sufficiently demanding without adding new areas.

As an alternative to Mr. Schneider's motion, it was suggested that the Merit System Council be replaced by a new appeals body which would hear all personnel appeals and possibly classification appeals of unorganized employees. This would create a uniform appeals board for grievances of unorganized employees and free the BPA to act as a labor board after the model of the NLRB.

It was noted that any agency that assumed the grievance appeal function of the Merit System Council would probably need to adopt rules governing personnel practices which would be outside the sphere of expertise of the BPA.

It was also noted that while the legislature might be reluctant to fund a new board, funds for staff would be required no matter where the grievance appeals responsibility was placed. Since there have been few grievance appeals from agencies which have appeal rights, the work load is not expected to be great.

It was noted that currently only a fraction of a FTE in the Personnel Division was used to support the Merit System Council. When asked about the staff support required if the Council were to hear all employee grievances (except classification grievances), Mr. Taylor estimated 1 FTE would be required if the Commission's estimate of the number of grievances is correct.

The possibility of making the appeals board responsible for hearing human rights complaints was also raised. Several Commissioners indicated that they felt including human rights appeals would be politically unfeasible and inappropriate since human rights cases involve violation of fundamental rights as opposed to simple grievances. It was also noted that there were hundreds and hundreds of human rights complaints as opposed to a handful of grievances or the 45 or so unfair labor practice cases filed with the BPA each year. Throwing these cases onto either the BPA or another board would create a large work load. Handling these cases also requires expertise in EEO law.

One of the labor representatives indicated he felt the number of grievance appeals that would be filed was underestimated because unions would opt to use the free super board rather than go to arbitration. Another labor representative disagreed that arbitration would be abandoned.

Mr. Wicks then moved that a new board be created and attached to the Department of Administration. This new board would eliminate the Merit System Council and assume the responsibility for grievances currently held by the BPA.

Mr. Schneider seconded the motion, indicating that while he didn't think the number of either general grievance appeals or classification appeals would overload the BPA, he did think there was merit to splitting these functions so that members of the two boards could concentrate their efforts and become more expert in their areas. He also suggested that one staff member report directly to the Board to avoid conflict of interest. Mr. Taylor, Head of Personnel, felt there were no problems with the creating of such a Board.

Opposition to an appeal beyond the department was expressed by one Commissioner because of the potential ill effects on the departments. Others expressed the need for uniformity and the possibility of reducing infringement on agency prerogatives by carefully defining the scope of authority.

A roll call vote was taken; seven (7) Commissioners voted in the affirmative; three (3) were negative (Senator Van Valkenburg, Mr. Driscoll and Mr. Schramm); and three (3) were absent. The motion carried. The staff was charged with developing draft legislation.

#### Study Question 3 - Composition of the Board of Personnel Appeals

Mr. Robinson made a motion that there be no change in the composition of the Board of Personnel Appeals. Mr. Schneider seconded it. After brief discussion, a roll call vote was taken. Ten (10) votes were in the affirmative and zero (0) were in the negative; three (3) members were absent. The motion carried.

#### Study Question 4 - Procedures for Expediting the Handling of Unfair Labor Practice Cases

Mr. Schneider moved that the Commission recommend legislation to better define the statutory five month limit on BPA decisions.

In the debate that followed, the need for clarification and its impact on timeliness of BPA decisions was discussed. It was noted that the BPA has already instituted a number of changes which should expedite the process, and that information on how well these are working can be obtained later in the year. It was also noted that adoption of one of the options presented for Study Question 6 (granting authority to the BPA staff to dismiss unmeritorious cases) would speed the process.

Several Commissioners felt that although there might be no need to develop recommendations for speeding up the process at this time, there was still a need to clarify the law.

In the absence of a second to Mr. Schneider's motion, Mr. Robinson moved that the Commission recommend that the statute be amended to define the five month period to mean that period of time between submission of all post-hearing briefs up to the final order of the BPA and recommend that the five month period be retained in the statute.



Senator Van Valkenburg seconded the motion.

It was noted that this recommendation would not change the time limit. It would recognize BPA's definition as the proper one. The question was called. A roll call vote was recorded. There were eleven (11) affirmative votes; two (2) absent. The motion was carried.

Commission staff suggested that question #5 be deferred until after related material is presented at the April meeting. Mr. Schneider moved that question #5 be deferred. Mr. Wicks seconded the motion. The question was called. There followed a voice vote unanimously in favor of the motion.

#### Study Question 6 - The Scope of Authority of the BPA

Chairman Bardanoue brought question #6 to the floor and asked for comments. Mr. Schramm moved that the BPA staff be allowed to dismiss a case if it has no merit. It was noted that the complainant would have the right to appeal the dismissal to the full board. Mr. Schneider seconded it. The question was called and a roll call vote taken. There were ten (10) votes in the affirmative; three (3) members were absent. The motion carried.

The remainder of the study questions were tabled to enable the Study Commission to stay on schedule.

#### G. Staff Reports and Discussion

Joyce Brown announced that Jean Moffatt, Labor Specialist in the Labor Relations Bureau, Personnel Division, would present Report #8, "Collective Bargaining for Public Employees in the State of Montana," and Dick Olufs, Assistant Professor in Public Administration at the University of Montana, would present Report #9, "Approaches to Legislative Involvement in Collective Bargaining in Other States."

#### Staff Report #8 - Collective Bargaining for Public Employees in the State of Montana

This staff report presented background information on Montana's collective bargaining procedures and their development. It covered collective bargaining laws, types of collective bargaining agreements, and a brief chronology of negotiations. Following a description of separate negotiations for economic and non-economic issues, Ms. Moffatt was asked to define what is and is not an economic issue. She indicated that pay and other cost items are economic, but that a lot of issues are in a grey area, such as coffee breaks and uniforms. The view that the definition of economic issues was too narrow was expressed. Items like second allowances for Highway personnel have substantial economic impact but are not treated as economic issues in negotiations.

In response to a comment that wages for the same job varied from agency to agency before the classification and pay plan, a union representative noted that as a result of annual step increases, wages still vary for employees performing the same work.

Staff Report #9 - Approaches to Legislative Involvement in Collective Bargaining in Other States - presented by Dick Olufs

The objective of this report was to provide the Commission with information on the following study questions:

Study Question 8 - What should be the respective roles of the executive branch and legislative branch in collective bargaining? How much control should each exercise?

Study Question 9 - Should any control the Legislature might have be confined to economic issues?

Study Question 10 - Do two sets of negotiations - one for economic contract items, one for non-economic items - limit the ability of parties to bargain effectively?

Findings: Mr. Olufs' research revealed that the issues are inherently political in spite of many attempts to make public sector bargaining a clean administrative process. No evidence points to permanent structural solutions to problems within the political framework of bargaining, although successful reforms are possible. Clarity of roles and expectations is the major factor behind good public policy and collective bargaining.

There are six categories into which the states polled fall, all of which were viewed favorably by most of the individuals interviewed:

- a. Complete legislative control of economic items (legislation of pay plans.)
- b. A legislative role in bargaining strategy and ratification through a standing committee.
- c. Legislative committee review, occasionally affecting bargaining.
- d. Legislative final approval of contracts, no prior organized contact with bargaining parties.
- e. Ratification of agreements delegated to an independent Commission, legislative modifications requiring exceptional provisions.

Mr. Olufs' research revealed that legislative control over economic issues but not over non-economic issues encourages more active political lobbying on the former and more intense bargaining on the latter. The arrangement generally is not considered desirable by unions. One state (Minnesota) with a legislative committee, which in practice reviews both economic and non-economic items, is workable as long as the executive branch negotiators and the committee work together and the full legislature is willing to delegate decision-making to the committee.

Dr. Olufs found that, in general, the existence of two sets of negotiations does not represent a clean bargaining arrangement and that it adds complexity to the bargaining framework. In the states polled, two out of three which had separate negotiations switched to consolidated negotiations. Hard data on the costs of separate agreements (economic and non-economic) are scarce. Other factors play the major role in determining costs.

Conclusion: Collective bargaining in the public sector is inherently a political process. Governments will face hard times in the 1980's, and the long term problems will be settled solely by the willingness of affected parties to work together, irrespective of structural reforms in the collective bargaining process.

Discussion: Dr. Olufs remarked that social scientists are not working on these particular questions. Only a few states' experiences can be applied to Montana - in particular, Wisconsin and Minnesota. He indicated that a variety of arrangements appear to work as long as the parties agree. He suggested change be affected through consensus rather than fact, since bargaining attitudes determine if reforms work.

The Commission asked Dr. Olufs if he felt that any one structural solution has more merit than others. Dr. Olufs indicated that he thought the Wisconsin and Minnesota models should be considered.

#### H. Public Hearing

The afternoon session was called to order at 1:10 p.m. to hear testimony from invited guests and other interested parties, particularly the legislative leadership and labor leaders.

The Honorable Bob Marks, Speaker of the House, stated that he has several concerns: (1) the pay plan is wearing out. The matrices have been stretched and bent by negotiations and by the legislature. Consequently, pay for middle management is not competitive with the private sector. (2) Reclassification of positions by department directors is felt by some to be unfair. (3) Based on the staff reports, it is doubtful that other states have come up with a better plan for dealing with legislative involvement in collective bargaining. He indicated that the circumstances resulting in the problems of the last legislative session were somewhat unique - a new governor who had not negotiated the agreements was presenting them to a relatively new legislature. However, Representative Marks expressed the need to increase the awareness or involvement of senior legislators and legislators on finance committees during the negotiation process. He also indicated that the Personnel Division suffered some credibility problems necessitating better communication between the Personnel Division and the legislature in regard to the cost of state employee compensation. Rep. Marks recommended that fiscal analysts be included in the budgetary process. He feels the best way to handle the cost of state employee compensation is to have the legislature decide how much the state could spend and then give it to the executive branch. Rep. Marks indicated that he does not believe it would be in the best interests of either side to have the legislature negotiate directly with the unions.

A labor representative indicated that the blow up in the last legislative session was over the legislature's attempt to rework the pay plan rather than sticking to decisions on total dollars to be appropriated. Representative Marks indicated that the legislature took that approach out of sheer frustration.

It was suggested that legislative provision of a pot of money to be distributed by the executive branch would solve one problem but would result in unorganized employees (particularly mid-managers) being short-changed. Organized employees would be able to apply more pressure and obtain a disproportionate share of the pie.

The formalization of the relationship between the legislature and the collective bargaining process was discussed. Rep. Marks indicated that he was not sure a formal arrangement was needed. He suggested that the Personnel Division could update an interim committee, perhaps the Finance Committee or legislative leadership. These individuals could provide some indication of caucus views. Rep. Marks and other legislators were invited back to listen to people brought in from other states to talk about their solutions.

Representative Gene Donaldson, Chairman of the House Appropriations Committee, testified that he believed the legislature is not the proper vehicle for negotiations, but that legislators do need to be kept informed. He suggested that legislators could also be invited to express their concerns in a hearings process, perhaps using the Finance Committee as a vehicle. Rep. Donaldson expressed concern over the fact that technicians working for the State of Montana and performing valuable functions are put in administrative positions to provide pay raises because technician salaries are not competitive with private industry. He indicated that these kinds of concerns need to be addressed by a legislative committee prior to negotiations. From that point on, the executive branch should perform the negotiations, keeping the legislature informed on an informal basis.

A discussion ensued concerning the pay plan and its construction.

In response to a question on the desirability of having economic packages divided into wages, health insurance and other economic benefits for consideration by the legislature, Rep. Donaldson indicated that he did not feel this breakdown would be helpful. He indicated that it is not feasible to accept and/or reject parts of a negotiated package. The legislature can and must decide whether to fund the package, but the particulars must be negotiated by the executive branch. If the legislature refuses funds, the package must go back to the executive branch for re-negotiation. Representative Donaldson indicated that he felt early submission of the bill to implement the pay plan would be helpful.

Representative Bobbie Spilker, Majority Whip, indicated that she feels the legislature should ultimately approve a lump sum for executive branch distribution. In the absence of that approach, she expressed the need to see the whole pay plan and benefits

package to know how much state employees are costing. She cited hidden costs, such as the cost of getting rid of employees. She noted that the legislature never appropriates money for this kind of thing. She asked that the Commission do whatever it could to help the legislature see the whole budget for state employees, adding that no contracts should be signed prior to legislative approval.

The Commission discussed how the private sector and municipal government handles similar problems, particularly the fact that private sector contracts are signed pending ratification from the Board of Directors, which correlates to the legislature. It was noted that the analogy breaks down because Montana negotiates two packages - economic and non-economic. The legislature approves the so-called economic items, but after it goes home, demands for so-called non-economic items are made that add additional costs. The need for better definition of "economic" was reiterated.

It was also noted that private sector bargainers operate under guidelines from their boards that public sector bargainers generally do not receive from their legislatures.

Representative Holiday was called to testify, but she was unable to attend because of the weather.

Senator Blaylock, Minority Leader, opened his testimony with a recounting of his experiences during the last session of the legislature when a strike of state employees was threatened. It led him to believe that the legislature should not tamper with contracts. Such tampering results in unions dealing with the legislature. It is his opinion that the legislators do not have the time or expertise to take on collective bargaining. He stated that he also realized that a completed contract provides few alternatives. His recommendation is to look at the Minnesota system--i.e., a ten member, bi-partisan oversight committee that is kept informed of collective bargaining processes.

He further noted that there is always some game-playing by legislators who do not want the unpopular task of saying "no", but like to criticize the chief executive for "giving away the store."

Senator Blaylock also noted that there is some bitterness over what the legislature pays its staff. He suggested a legislative committee should set pay for all legislative staff.

The Commissioners questioned Senator Blaylock on legislative involvement in negotiations. He answered that an oversight committee would help solve the problems but it should not be the Finance Committee. He suggested a truly bi-partisan committee. In response to a question on confidentiality, Senator Blaylock indicated that the committee should not be setting parameters for negotiations. The committee should serve an informational function, besides acting as a prod to resolve impasse. The question of how employees of the Legislative Council staff can be part of a classification and pay plan was also explored.

Jim McGarvey, Montana Federation of Teachers representative expressed the frustrations that unions are feeling with the negotiation process. He stated that there should be more legislative and union input in the pre-budget negotiations. The classification system was discussed, as was the unions' view of their inability to negotiate career ladders, continuing education and movement within the agency for their members. He stated that it is vital and important to the union that they be able to do this. Mr. McGarvey gave a brief chronology of how the legislature had changed the nature of negotiated agreements between public employee unions and the executive. He noted that the bargaining table was already too confined and that the legislature has narrowed it further. He asked that the Commission not change the number of bargaining units allowed in negotiations.

The Commission and Mr. McGarvey considered how inequities in classification could be changed without opening up the entire classification system to negotiation. Mr. McGarvey's position was that classification should be negotiated.

Prior to Dr. Olufs' departure, he was asked to respond to several additional questions.

In response to a question on the composition and role of the legislative committees in the states he researched, Dr. Olufs indicated that they are usually made up of party leaders and the role is advisory. In response to a question on whether contracts were signed before the legislature met, he answered "yes".

The testimony was re-opened by Owen Nelson, representative for the Montana Education Association. His concerns were that: (1) employees should have the right to bargain a full and complete package rather than separate economic and non-economic packages; (2) the union should be able to negotiate rather than lobby economic issues; and (3) there should be no revision of the collective bargaining laws.

The Commission raised several questions relating to direct bargaining and lobbying between unions and the legislature. Mr. Nelson commented that lobbying has been and will be an on-going effort of unions, but it should not be done in lieu of negotiations.

Mr. N. F. Donahue, retired City Attorney from Kalispell, stated that he did not represent a constituency but wished to share some of his experiences involving city collective bargaining efforts with public employee unions.

He asked that the Commission keep in mind that what they do will have an impact on city and county dealings with their employees. He noted that the legislature can undermine the municipal government's position with unions with poorly written laws.

Mr. Nelson indicated that the Board of Personnel Appeals should make rules concerning dismissal of claims that do not allege a violation of law as written; they should be able to summarily dismiss such cases. He indicated that the Board should not sit on or summarily dismiss cases that do allege a violation of law, even if filed during



negotiation. He suggested that such claims be decided within a ten-day to three-week time frame so they can be decided during negotiations. He feels that setting them on the "back burner" denies the right of remedy. He also expressed his support for BPA adoption of the Collyer Doctrine.

Mr. Gooch of the Department of Institutions expressed the view that, since 1975, administrative decisions have changed the pay plan and introduced inequities. Mr. Gooch also noted that his proposal for breaking economic packages into wages, insurance and other benefits was not intended to involve legislative action on each area. It would simply provide the legislature with more adequate information. He again suggested the need for a better definition of economic items, such as pay-out on termination, two and one-half times regular rate of pay on holidays, contributions into apprenticeship funds, tool allowances for crafts, and paid time for negotiations. He expressed the need for a better way of identifying these unfunded liabilities.

The Commissioners and Mr. Gooch discussed how these non-wage benefits came about. One explanation was that wages used to be so low that they were supplemented by meals, rent, etc.

In response to a question on whether economic issues should be negotiated separately, Mr. Gooch indicated he felt that separate negotiations were appropriate since the legislature must vote on economic items.

Union representatives agreed that salary and benefits should be spelled out in pay matrices so employees, like the legislature, can see what they are really getting.

Carroll South, Director of Institutions, pointed out problems in the pay plan. He said that step increases have served as partial cost of living increases. The legislature reduces the cost-of-living increase in proportion to the increase employees will realize by their step increase. This practice creates two problems: (1) Entry level, step 1, salaries are not given appropriate annual cost of living increases and eventually lose ground; (2) Employees at the last step no longer receive appropriate cost of living increases.

Mr. South indicated that he favors one bargaining session for both economic and so-called non-economic items for more bargaining flexibility. He indicated that once the pay plan is set, agencies have no bargaining chips. He feels that the executives could bring an economic package to the legislature based on negotiations with bell wether units. The legislature could appropriate X number of dollars and let the executives decide how to distribute it. The executive would then be faced with the problem of how to finance increases with insufficient funds.

Mr. South also expressed the need for a statutory definition of what constitutes an economic issue so that all economic issues are settled and presented to the legislature. The need for a statutory definition was questioned by the Commission since the executive branch can already negotiate on items they regard as economic in advance.

One of the labor representatives questioned the feasibility of including unit-specific economic items (such as a uniform allowance) in economic negotiations, since employees in one unit would not be willing to trade wage increases for someone else's uniforms. He ultimately concluded that difficulties in obtaining concessions on any items involving costs after the legislature leaves provides no alternative to pre-budget negotiations.

It was noted that the state currently has a lever to get unions to come to terms on non-economic issues. Economic benefits can be withheld until the non-economic portion of the contract is ratified. Labor representatives noted that this possibility was another reason they plan to negotiate all items in one session in the future.

#### Follow Up and Planning Session

In response to the question of what out-of-state representatives should be invited to the March meeting, Chairman Bardanouve suggested someone from Minnesota. Based on alternatives presented by the staff, Mr. Simoneau, a legislator, or Mr. Triplett, a staff member, were suggested. Representatives from Wisconsin were also discussed.

Mr. Robinson moved that we have two people appear at the next meeting, either Senator Offner or Representative Lee from Wisconsin, and Representative Simoneau or Mr. Triplett from Minnesota.

Mr. Wicks seconded the motion.

Mr. Schneider commented that he would rather see Mr. Simoneau and Senator Offner as first choices; the other as alternates.

The question was called and unanimously carried.

The issues to be covered in March were considered further. The Commission decided to include:

- (1) the two guests,
- (2) impasse resolution
- (3) completion of unfinished business.

The staff was requested to provide a decision tree a week in advance.

In preparation for the April meeting, several proposals for an independent, peer review of the classification system were presented by the staff. The proposal by the Council of State Governments was deemed too expensive. The Commission decided to directly contract with three other states' classification officials for the review. The Commission also decided to make the April meeting a two-day meeting, beginning with a public hearing Thursday evening, April 1st, followed by an all day session, April 2nd. Mr. Robinson suggested that Joyce Brown ask Mr. Raucci to draft specific language which would mandate the adoption of the Collyer doctrine by the Board of Personnel Appeals. The meeting adjourned at 5:10 p.m.



I. Decisions/Accomplishments:

The Commission adopted the following tentative recommendations:

- (1) Establishment of a uniform grievance appeal procedure for state employees.
- (2) Creation of a new grievance appeals board to hear employee grievances from all state agencies--replacing the Merit System Council and attached to the Department of Administration.
- (4) Clarification of the statutory language requiring a final Board of Personnel Appeals decision on unfair labor practice cases within five months of submission.

The meaning of the disputed word "submission" would be defined to mean the date on which all final briefs and pleadings are filed with the BPA.

- (4) Modification in the Collective Bargaining for Public Employees statute to allow the BPA staff to dismiss unmeritorious unfair labor practice cases after a preliminary investigation, subject to appeal to the Board.

The Commission also decided to invite representatives from the states of Minnesota and Wisconsin to address the Commission at the March meeting regarding the operations of their legislatures' collective bargaining oversight committees.

The April meeting was switched to the first and second days of the month, with a public hearing planned for the evening of the first.

The staff was authorized to contract with classification officials from three states to conduct an independent review of the classification system and report to the Commission at the April meeting.

J. Follow-Up Action:

<u>Task</u>	<u>Who</u>	<u>When</u>
Invite representatives from Minnesota and Wisconsin to address the Commission.	Personnel Division	For the March meeting
Prepare a decision chart on the issue of legislative involvement in collective bargaining.	Personnel Division	For the March meeting
Draft legislation establishing a grievance board.	Personnel Division	For the March meeting

<u>Task</u>	<u>Who</u>	<u>When</u>
Draft legislation granting BPA staff the authority to dismiss unmeritorious ULP cases.	Personnel Division or BPA	For the March meeting
Draft legislation defining the 5 month limit for BPA decisions on unfair labor practice cases.	Personnel Division or BPA	For the March meeting
Contract with classification officials from other states to conduct an independent review.	Personnel Division	For the April meeting

Minutes

PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

A. Meeting: 2nd Floor Conference Room  
Cogswell Building  
Helena, Montana

B. Date: March 2, 1982

C. Overall Objectives:

To reach tentative decisions on study questions 6 and 7 as well as other questions raised at previous meetings, to hear staff reports, and to hear presentations by invited guests, Rep. Wayne Simoneau of Minnesota, and Hugh Henderson of Wisconsin, and other interested parties, regarding legislative involvement in collective bargaining, fact finding and impasse resolution.

D. Participants:

Chairman Frances Bardanouve  
Senator Fred Van Valkenburg  
Rep. Calvin Winslow (arrived at 9:50 a.m.)  
Jerry Driscoll  
Richard Ferderer  
Tom Schneider  
Don Robinson  
LeRoy Schramm  
Gary Wicks  
Don Archibald sitting in for Percy Cline

E. Meeting Proceedings:

Chairman Bardanouve called the fourth meeting of the Personnel and Labor Relations Study Commission to order at 9:05 a.m., March 2, 1982. The Commission secretary noted that the last paragraph on page 10 of the February 2nd minutes should be corrected to begin with the name of Mr. Donahue rather than Mr. Nelson. It was moved that the minutes be accepted as corrected and the motion was carried.

Executive Session:

The Commission then went into executive session for the purpose of deliberating on study question 6 and 7, from the decision chart of January 29, 1982.

Study question 6-Part A concerning Board of Personnel Appeals assumption of jurisdiction over fair representation cases. In the ensuing discussion, the following points were covered:

A State Supreme Court case (the McKarvel case) supporting the BPA assumption of jurisdiction was cited. The Commission agreed that the case was decided correctly and that the BPA should continue its policy of assuming jurisdiction over fair representation cases. The Commission consequently decided to take no action on this question.

Study Question 6-Part B concerning BPA adoption of the Collyer Doctrine. (deferral of appropriate contract disputes to the negotiated arbitration process.) Consideration of this part of Question 6 was tabled until the information requested from Francis Raucci is available. Mr. Raucci, a member of the Board of Personnel Appeals, was previously asked to submit proposed legislation to institute the Collyer doctrine.

Study Question 6-Part C concerning the disparity between the handling of unfair labor practices involving nurses which go to district court as opposed to those involving other public employees which go to the Board of Personnel Appeals.

It was generally felt that the BPA should have jurisdiction over all state employees, including nurses. Eileen Robbins, a representative from the Montana Nurses Association, was asked for the nurses' view of the question. She commented that a committee would be meeting in two days to consider the issue and would report back to the Commission soon thereafter.

The Commission agreed that the nurses should have an opportunity to voice their concerns before a decision was made and should get their report to the Commission before the next meeting.

Mr. Wicks moved that the question be tabled until the next meeting.  
Senator Van Valkenburg seconded it. The motion was carried on a voice vote.

Study Question 6-Part D. A decision on this part was made at the February 2, 1982 meeting.

Study Question 6-Part E concerning BPA interpretation of the grandfather clause to mean that pre-act bargaining units are protected.

This issue generated considerable debate. Several commissioners indicated that although there was a case before the State Supreme Court which would resolve the question of the appropriateness of the BPA's interpretation of the grandfather clause, it would not resolve the question of what protections the grandfather clause should provide.

One commissioner argued that while the grandfather clause was necessary to protect existing relationships when the Collective Bargaining for Public Employees was passed, now, after eight years, it is creating more problems than it solves. The major problem mentioned was that the grandfather clause, as interpreted by the BPA, serves to lock inappropriate employees (particularly managerial employees) into collective bargaining units.

Labor representatives on the Commission questioned that the grandfather clause was causing any problems. They felt that the matter should be left up to the courts. It was noted that the party appealing the case through the court system to clarify the law would lose \$10,000 if the legislature altered the law after the fact. They also argued that if the grandfather clause is repealed, it would add to the erosion of the original compromises struck in 1973 when the statute was passed. They also noted that much of the dispute over the supervisor in bargaining units concerns disagreement over who is or who is not a supervisor, and cannot be solved by repeal of the grandfather clause.

To clarify the impact of the upcoming Supreme Court decision on the case before it involving the grandfather clause, Bob Jensen, administrator of the BPA, was asked to summarize the case. He said the case involves clarification of the bargaining unit among the firefighters in Billings. In District Court, the judge ruled that, for all intents and purposes, the grandfather clause was no longer in existence because if anyone is now a supervisor, he should no longer have the protection of the grandfather clause. A ruling is expected this summer. He also described a similar case involving the state prison. In response to questioning, Mr. Jensen indicated that the grandfather clause is causing litigation and is a source of unit clarifications.

Arguing that the legislature should examine whether the grandfather clause (as interpreted to cover bargaining units) is unnecessarily creating litigation and destroying another part of the act requiring that supervisors be excluded from the bargaining unit, Senator Van Valkenburg made a substitute motion. He moved that the staff prepare proposed legislation which would clarify the grandfather clause so that it clearly applies to protecting existing bargaining agreements but does not include protection for existing bargaining units as they existed prior to the adoption of the CPBA.

Mr. Robinson withdrew his motion and seconded Senator Van Valkenburg's.

At this point, two of the Commissioners noted that this motion, if carried, would be a change in the procedure. This Commission had agreed to take tentative positions on questions for which the staff would draft implementing legislation for subsequent Commission review. In this instance, the staff was being asked to draft legislation prior to a tentative position by the Commission.

It was generally agreed that this approach was appropriate given the degree of division on the issue. It was felt that greater consensus might be reached once the implementing legislation is presented.

Commissioners favoring the motion discussed specific problems created by the grandfather clause. The dispute over whether lieutenants at the prison can be excluded from a grandfathered bargaining unit was cited as a case in point. An independent, out-of-state consultant had cited the exclusion of supervisors in the bargaining unit as the prison's main problem in making effective staff assignments. The problem of local school district supervisors being required to maintain their membership in a unit because of the grandfather clause while at the same time acting as policy makers involved in collective bargaining strategy was also cited.

An opposing labor representative indicated repeal of the grandfather clause would create hundreds of problems by splitting the two- to five-person highway maintenance sections around the state. Each section contains one supervisor.

In rebuttal, it was argued that this kind of problem can be solved by creating separate definitions of supervisor for special cases, but that there is no logic in locking someone into a unit because he happened to be there in 1973.

It was further argued that one of the objectives of the Commission is to look at what has happened since 1973 and offer solutions to any problems that have arisen since then.

Jerry Driscoll made a substitute motion. He moved that the Commission leave the grandfather clause agreement as is. Tom Schneider seconded it.

A roll call vote was taken; three (3) commissioners voted in the affirmative; five (5) were negative (Mr. Robinson, Sen. Van Valkenburg, Mr. Wicks, Mr. Schramm, Chrm. Bardanouve.)

The motion failed. The chair then called for the original motion. Senator Van Valkenburg was asked to restate his motion.

Sen. Van Valkenburg restated it as follows: "The staff prepare legislation for the next meeting which would amend the grandfather clause in the Collective Bargaining for Public Employees Act to clarify the grandfather clause so as to indicate that we are grandfathering in existing bargaining agreements that were in effect prior to the adoption of the act, but not grandfathering in existing bargaining units."

A roll call vote was taken. Four (4) Commissioners voted in the affirmative; three (3) in opposition, (Mr. Driscoll, Mr. Schneider and Mr. Ferderer); and the Commissioner who had just arrived abstained.

The motion carried.

Study Question 6-Part E concerning a limitation to the number of bargaining units.

The Commission generally noted past controversy over this question (Senate Bill 80) and questioned the need to rehash it. In response to a question on what measures might be taken short of those in Senate Bill 80, Joyce Brown noted that the staff paper on this question had discussed such possibilities as department, division, institution or even bureau wide units. The possibility of attempting to reduce the proliferation of new units without disturbing current ones was discussed but rejected. It was generally regarded as unnecessary since the number of units over the last several years has declined.

Study Question 7 concerning accessibility of BPA decisions.

Senator Van Valkenburg moved that the Commission recommend to the legislature that funds be appropriated for the publishing of an index of all BPA decisions current within six months time.

Tom Schneider seconded the motion.

The possibility of publishing the decisions themselves was discussed but rejected. According to Bob Jensen, there have been limited requests for copies of decisions. Given the limited demand, it was felt that an index permitting a specific request was adequate accessibility.

The possibility of handling the index publication through a revolving fund was also discussed but rejected in favor of seed money. Mr. Jensen indicated that once he receives an appropriation to complete the index to date, it could continue on a subscription basis. He estimated that \$5000 would be required.

A roll call vote was taken; nine (9) Commissioners voted in the affirmative, and zero (0) were in the negative.

Question A raised at the February meeting concerning whether the BPA staff should be selected and supervised by the Commissioners of Labor and Industry.

Gary Wicks, arguing that all units of government should be directly responsible to the chief executive and that the current arrangement has created no conflict of interest, moved that the supervisory arrangement (of the BPA) remain the same. Sen. Van Valkenburg seconded it with the caveat he does not agree with Mr. Wicks' philosophy in the case of the Human Rights Commission.

In the debate that followed, the ability of the BPA to be a neutral body in its present relationship to the Department of Labor and Industry was argued.

Tom Schneider then offered a substitute motion. He moved that the BPA staff be taken out from under the Commission of Labor and placed directly under the BPA. Mr. Schneider explained that he represents three units of employees under the Commissioner of Labor and Industry and feels that the BPA cannot be truly neutral and impartial in cases involving them. LeRoy Schramm seconded the substitute motion.

The idea of the BPA becoming more independent of outside influence was considered. Mr. Wicks voiced the belief that independent units of government created managerial problems. He indicated that government officials, and those appointed are sensitive to remaining neutral in disputes such as those considered.

Don Robinson noted that the independent PERS (Public Employee Relations Service) review and evaluation team had strongly recommended that the Board of Personnel Appeals be made truly independent and neutral by removing it from the Department of Labor and Industry. Further noting that the Commission had yet to complete its decision-making on what boards should exist and their functions, he offered a substitute motion to all motions pending. He moved that the Commission defer consideration of this issue until such time as the Commission is considering all the various boards and functions (labor relations, grievance appeals and classifications).

Mr. Schneider seconded it.



A roll call vote was taken. There were five (5) votes in the affirmative and four (4) cast in the negative, (Sen. Van Valkenburg, Mr. Driscoll, Mr. Schramm, Mr. Wicks.)

The motion carried. One of the opponents indicated that he felt the exact function of the BPA should not affect the decision.

Question B raised at the February meeting concerning specialization of BPA staff between adversarial and mediation functions was considered.

Mr. Wicks moved to defer this question until the functions of the Board are known.

Mr. Schneider seconded it.

A roll call vote was taken. There were nine (9) votes in the affirmative and zero (0) in the negative.

#### Staff Reports and Discussion

Ms. Brown announced that John Balsam, Research Specialist for the Study Commission, would present Report #2, "Factfinding," and Report #10, "Impasse Resolution."

Mr. Balsam commented that since 1973, mediation has been increasingly successful in impasse resolution. He indicated that while the number of cases going to mediation has increased, the number of cases going on to factfinding has decreased. In addition, the number going to arbitration continues to be minute and the number of strikes has not increased to any significant degree.

Despite its relative success, he reported that mediation is hampered by a lack of competent mediators. He suggested a training program to develop more trained mediators.

Mr. Balsam observed that factfinding is the most controversial impasse resolution method. He outlined three common views of factfinding:

- (1) retain it in its present form
- (2) retain it in an altered form
- (3) eliminate factfinding from the impasse resolution procedure.

Those who feel that it should be retained in some form point to its success in resolving impasse in a few difficult cases. Those who feel that it should be eliminated argue that it is an unnecessary step that encourages delays in resolution.

Several options for altering factfinding were presented:

- (1) authorize the mediator to order factfinding if he/she believes it will be useful in reaching settlement.
- (2) make factfinding mandatory when either party requests it, regardless of whether or not the prior collective bargaining agreement has expired;



- (3) make factfinding mandatory before economic action can be taken.

In his discussion of arbitration, Mr. Balsam noted that arbitration is rarely used in Montana and other states which allow work stoppage or strikes. He further explained that Montana deviates from the norm in allowing strikes. In 1979, two-thirds of all states prohibited strikes by public employees based on the premise that employees paid by the taxpayers should not have the right to discontinue public services.

In his research, Mr. Balsam discovered two additional methods of impasse resolution:

- (1) non-stoppage strike
- (2) graduated strike.

Conclusion: Of the present impasse resolution methods, mediation is effective but could be improved by developing further training for existing mediators. Factfinding is controversial and needs to be reviewed to determine if it should be discontinued or modified. Arbitration offers an effective resolution method -- less than five (5) cases have gone to arbitration since 1973, and of those going that far, the arbitrator's decision has been accepted in every one.

#### Discussion

The Commission asked Mr. Balsam if he felt the present impasse resolution methods were working. Mr. Balsam answered that mediation is the most effective; that factfinding is effective, even though it is often viewed as a formal step on the way to economic action or arbitration; and that arbitration is successful but seldom used.

In response to questions, Mr. Balsam explained that factfinding is initiated at the request of the parties. BPA submits the names of five (5) factfinders, from which each party strikes two (2). The costs are divided between the two parties and the BPA.

In response to questions on the Labor Relations Bureau's view of factfinding, Rod Sundsted indicated that he felt factfinding is useful if requested by both parties. It can help the parties center on the issues. It also brings public pressure to bear. He consequently recommended that factfinding be retained in its present form.

Mr. Jensen, of the BPA, stated that there are constraints in using factfinding in the public sector because the budgetary process often does not allow time for it. He spoke in favor of its retention because it has been helpful in some cases. He answered questions from the Commission, relating that in a controversy, either side may request factfinding and either side may oppose it, but the BPA may impose it without a request from either party.

The question was raised of whether more factfinders are needed. Mr. Jensen told the Commission that there are fifteen to twenty factfinders now. Last year there were only ten requests for factfinders: in six

(6), either the request was withdrawn or the factfinder mediated; only four (4) completed the factfinding process. Mr. Jensen felt there is no present need for additional factfinders, but perhaps more training for those in place is needed. In possibility of using two factfinders to handle separate issues as a way of speeding up the process was discussed. Mr. Jensen indicated that it could be done if both parties agreed.sp

Labor representatives on the commission spoke in favor of factfinding, but noted that management has often disagreed with the findings because it felt the factfinder was pro-labor, making factfinding an unsuccessful method of impasse resolution. Recently the factfinding reports have been more balanced and, although rarely used, tend to be accepted by management.

Another Commissioner observed that rejection by either side of a factfinder's report is not an indictment of that procedure. He further stated that impasse in the public sector is often settled by public opinion. Rejecting a factfinder's report can and is used against the rejecting side.

The issue of whether strikers should have the right to collect unemployment compensation during strikes involving institutions where minimal services have to be maintained was raised for consideration. In response, it was noted that in bitter legislative battles in the 1979 and 1981 session, the legislature decided not to change the law in that regard.

#### Public Hearings

Brent Hunter, Personnel Director for the City of Billings, testified that local governments will feel the impact of decisions made by the Commission. When asked about particular concerns, he voiced the opposition of local government to mandatory interest arbitration. He stated that interest arbitration has a negative effect on local elected officials' ability to make financial and budgetary decisions, and that interest arbitration has been challenged constitutionally on the basis that it takes away power from the elected officials in local government.

The Commissioners asked questions and made comments to the affect that:

- (1) interest arbitration is a necessary alternative to strikes by firefighters who provide an essential service;
- (2) the legislature has been considering extending mandatory interest arbitration to include law enforcement employees;
- (3) neither unions or management likes interest arbitration but its existence contributes to labor-management peace;
- (4) because both management and labor find arbitration scary, factfinding becomes more meaningful when the next step in impasse resolution is interest arbitration.

Mr. Hunter admitted that neither the city of Billings nor any other city has experienced problems with mandatory interest arbitration for firefighters, but were more-the-less opposed to its extension because of the possible negative effect on local budgets.

Mr. Bob Jensen, of the BPA, indicated that he wished to respond to the staff reports; to make clarifications and to generally support them.

In reference to the staff paper #2 option of granting mediators authority to order factfinding, Mr. Jensen noted that mediators currently can and often do recommend factfinding.

He questioned why the options of a training program to produce more qualified mediators was included in the staff report #10. He noted that ad hoc mediators have not been used since 1975 or 1976. Mediation is currently handled by staff. He asked if there were complaints about the timeliness of mediation.

Mr. Balsam responded that some of the people he had talked to were displeased with the quality of mediators which prompted inclusion of the training option.

One Commissioner noted that many local government managers feel that the BPA staff is pro-labor because of its association with the Department of Labor and Industry and would not accept the mediators regardless of their qualifications.

After further discussion, it was determined that there does not appear to be a shortage of mediators, but that training of current staff mediators is needed. Mr. Jensen indicated that he had to train his staff on the job because he couldn't afford mediator schools. One of the labor representatives noted that labor representatives are sent to mediation schools conducted by the Federal Mediation and Conciliation Service because labor considers it a good investment.

The issue of the assignment of staff mediators, irrespective of their past history with the parties, was discussed. Mr. Jensen stated that he attempted to avoid assigning a staff member to mediate in cases where that staff person had made an adverse decision affecting one of the parties during the year.

Some of the Commissioners felt that this solution was inadequate because of long memories. The possibility of pre-emptory strikes from lists of mediators and the use of more ad hoc mediators were discussed. Use of Federal Mediation and Conciliation Services was also discussed. It was determined to be unfeasible because federal mediators are unable to travel due to a budget shortage.

Mr. Tom Gooch, Institutions, remarked that the State of Montana has institutions requiring continual, minimal coverage. In light of this fact, he wanted the Commission to consider these issues:

- (1) the right of public employees to strike
- (2) whether strikers should receive benefits
- (3) the apparent conflict of authority between the BPA and the Labor Appeals Board when deciding if an ULP has been committed;
- (4) whether the State wants to bear what could be triple expenses, "if labor got all it wants"(i.e. cost of national guard coverage, unemployment benefits for strikers and substantial miscellaneous costs such as extra food.)

It was suggested that the staff prepare alternative solutions to these problems for Commission recommendations even if they were considered by the legislation before.

It was also suggested that input from the School Board Association on these issues would be appropriate since there is a good deal of labor strife involving school boards.

Mr. Vern Erickson, Montana State Firefighters Association, spoke on binding arbitration and how it is working with the firefighters. He believes its existence encourages settlement and avoids strikes. He further stated that it will take time to see how effective it is. He feels that as the Firefighters Association gains more experience filing briefs, it will be able to make a determination on how well binding arbitration is working.

#### Afternoon Session:

The afternoon session was called to order at 1:05 p.m. to hear testimony from Mr. Hugh Henderson and Rep. Wayne Simoneau, invited guests from Wisconsin and Minnesota, respectively.

Mr. Henderson, Secretary of Wisconsin's Department of Employee Relations, opened his remarks with a summary of his department's organization and operation. He continued by explaining that Wisconsin's legislative over-committee--the Joint Committee on Employment Relations (JCER)--was created statutorily to review all negotiated contracts and all non-represented pay plans, including the legislature, the courts, and the university faculty.

Mr. Henderson pointed out that the JCER is composed of eight members:

- (1) the two Co-Chairman of the Finance Committee, (one senator, one assemblyman);
- (2) the minority and majority leaders from both the Senate and the Assembly;
- (3) the president of the Senate;
- (4) the Speaker of the Assembly.

Mr. Henderson summarized the role of the JCER by explaining that the Department of Employee Relations is statutorily required to meet with the JCER prior to bargaining. At this meeting, the JCER establishes parameters on the total compensation package it wishes to set.

He further explained that during the actual collective bargaining negotiations, the state's negotiators may not make any counter offer without first informing the JCER of the offer unless this requirement is waived which it often is. He added that the JCER will not accept any agreement that carries over from one biennium or appropriation to another, nor will it approve any contract that carries over a cost-of-living adjustment.

Mr. Henderson stated that collective bargaining with organized unions continues until a tentative agreement is reached. (Wisconsin's public employees do not have the right to strike.) If the proposed agreement is accepted by the JCER, it is put into bill form and forwarded to both houses of the legislature. The legislature either accepts the bill "as is" or rejects it, but neither the JCER nor the legislature has the authority to modify the agreement. If the bill is rejected, the Secretary of Employee Relations meets with the JCER to learn what problems exist. If the bill is accepted by the legislature, it then goes to the Governor, who can either accept it or reject it. In the latter case, the legislature can override the Governor's rejection.

A total appropriation for the University system is made by the legislature. The Board of Regents then determines how the funds are to be divided within the University system. The pay plan for the faculty, academic staff, and all other non-represented University employees is determined jointly by the Board of Regents and the Faculty Senate. This plan must then be accepted by, first, the Secretary of Employee Relations, and second, the JCER before it will go into effect. A pay plan for all other non-represented public employees is developed by the Secretary of Employee Relations. This plan is then approved by the JCER without going any farther.

Mr. Henderson stated that Wisconsin's public employee collective bargaining process works well in several respects. First, public employee unions, no longer faced with having to lobby the legislature for contract concessions, can now concentrate on the actual bargaining. Second, the legislature, while no longer having to deal with union lobbyists, still plays an important role in public sector collective bargaining by maintaining an oversight position. And third, agreements that have been negotiated by state and union representatives are no longer stalled in the legislature for long periods of time. He noted that the oversight committee initially wished to be informed of every offer by either side but soon found that it could not realistically review the process in that detail.

Following Mr. Henderson's presentation, Rep. Wayne Simoneau of Minnesota, outlined the make-up and purpose of Minnesota's Legislative Committee on Employee Relations (LCER).

He explained that the LCER, established in 1979 largely in response to the proliferation of bargaining units, is composed of six members:

- (1) the minority and majority leaders of the Senate;
- (2) the Speaker of the House and the Minority Leader of the House;
- (3) the Senate Chairman of the Governmental Operations, Finance, Taxes and Tax Laws Committee;
- (4) the House Chairmen of the Governmental Operations Appropriations and Taxes Committees;
- (5) two additional members respectively associated by the majority leaders of each house.

Rep. Simoneau stated that the LCER is primarily responsible for proposing legislative changes. He added that the LCER was later given statutory authority to ratify the negotiated agreements of all sixteen (16) bargaining units in the state as well as the twelve (12) agreements negotiated by the university system. After agreements are ratified by LCER, they are submitted to the legislature in bill form for adoption. They must be signed by the Governor before becoming law.

Rep. Simoneau explained that Minnesota's appropriations process begins in January of the odd-numbered years when the Governor submits his budget to the legislature. The legislature then determines what portion of the budget will go to public sector employees, and collective bargaining completes the process by dividing the appropriated funds among the various units. Contract expiration dates are after the legislative session to reduce pressures on the legislature. Rep. Simoneau commented that teacher strikes and strikes at state hospitals have created serious problems in Minnesota. The Governor proposed a bill which would prohibit state hospital employees from striking, but it has not passed yet. Rep. Simoneau added that identifying supervisors has also been a problem. Finally, he warned against internal pressure from lobbyists.

During the discussion with the Commission, Rep. Simoneau affirmed that Minnesota's sixteen (16) collective bargaining units were established by LCER along organizational lines to reduce the number of units. Another point made was that the LCER is allowed only the two options of either accepting or rejecting a collective bargaining agreement. The legislature, on the other hand, is constitutionally authorized to accept, reject, or modify an agreement.

Most employees may strike at any time after the contract expires after ten (10) days notice. Regardless of whether a strike occurs, negotiations while the prior contract is extended.



In response to a question on how Wisconsin's legislative committee compares with Minnesota's, Rep. Simoneau indicated that the committees in both states serve as a buffer between the legislature and the actual negotiations. He also pointed out that the committee has accomplished its intended goals, which were to identify the Governor as the CEO in the state, to give him a negotiating team to negotiate with the various unions, and to keep the legislature out of the negotiating process. Rep. Simoneau continued with a statement concerning the right to strike being granted to all state and local public employees. He indicated that since Minnesota granted this right, the only problems have been a rash of teacher strikes and an extensive strike by state hospital employees.

Rep. Simoneau concluded his presentation by citing a study on arbitration in Minnesota which concluded that similar settlements would eventually be reached, regardless of whether the parties negotiated the settlement or went through arbitration. The study also noted that parties which use arbitration once generally do not use it again.

The presentations by Mr. Henderson and Rep. Simoneau were followed by questions posed by Commission members and other interested parties.

To clarify when the Wisconsin JCER meets, Mr. Henderson explained that Wisconsin staggers its legislative sessions to meet at different times each year; the legislature is in session from May to July during the year in which the budget is made and the bargaining takes place. However, during the next year, the legislature meets from January to April because this is when the appropriations are made. If contracts are not settled by the time the legislature adjourns in July, negotiations continue until a tentative agreement is reached. If the JCER accepts the agreement, a special session of the legislature is called for the single purpose of considering the tentative agreement.

Mr. Henderson was asked if any differences exist between represented and non-represented employees. He responded by saying that there might sometimes be a difference in wages, since merit increases exist for non-represented units but not for represented units.

In response to a question on how Wisconsin handles job classification, Mr. Henderson pointed out that the Division of Personnel classifies all jobs. Appeals can be made to either the Personnel Board, the Personnel Commission, or the courts. He continued by explaining that the Personnel Board, composed of private citizens, hears only the matters concerning decisions by the Division of Personnel. On the other hand, the Personnel Commission, an adjudicatory body composed of three people who have been appointed by the Governor and confirmed by the Senate, can hear matters concerning decisions by the Division of Personnel, as well as equal rights grievances, sexual harassment cases, etc.

Mr. Henderson responded to a question concerning the number of collective bargaining units by indicating that thirteen (13) bargaining units are established by statute. AFSCME represents six (6) of these units; the others are made up of state attorneys, nurses, teachers, engineers, and science-related personnel. He added that no new bargaining units may be established without first amending the state's labor law.

A question was raised concerning the communication between the JCER and the Secretary of Employee Relations. Mr. Henderson stated that the JCER is not a controlling committee, but merely one interested in the negotiations for the sake of its constituents. He continued by saying that the Secretary works closely with both the Governor and the JCER and keeps them informed as to what is being demanded by the unions and what will be offered by the state.

He added that meetings between the JCER and the Secretary of Employee Relations (and his staff) are closed meetings. The meeting becomes public, however, as soon as the tentative agreement is presented to the JCER. Following a public hearing on the issues involved, the JCER retreats to a closed executive session meeting to vote on whether or not to recommend the agreement to the legislature.

Rep. Simoneau, asked about Minnesota's open meeting laws, stated that LCER meetings have never been closed to the public. He stressed that discussing collective bargaining strategies publicly, though, destroys the confidentiality of collective bargaining. As a result, LCER members are simply kept informed of the positions of both parties.

Rep. Simoneau was also asked about Minnesota's past proliferation of bargaining units and the problems they caused. He pointed out that one problem was the severe shortage of state negotiators. This problem was remedied somewhat in 1975, but a larger problem -- inequity of compensation between job classes--continued to exist. Once the unions realized they were fighting too much against each other, they were more willing to listen to ideas for cutting down the number of bargaining units. Through public hearings and interviews, the number of units was finally cut from one hundred and thirty (130) to sixteen (16).

In response to a question on the benefits of this reduction of bargaining units, Rep. Simoneau commented that labor now has the strength it had always wanted, and the state could now bargain with specific units in a reasonable manner.

Rep. Simoneau discussed how Minnesota was planning to remedy the inequities that exist between various male- and female-dominated job areas. Included in the discussion was the issue of comparable worth.

Both Mr. Henderson and Rep. Simoneau were asked about their respective state's impasse resolution procedures. Mr. Henderson replied by stating that mediation and factfinding are included in Wisconsin's impasse machinery, but that it is necessary for both parties to agree to use them. Neither party has to go either to mediation or factfinding. Mr. Henderson added that his department has never gone as far as factfinding, and that Wisconsin does not have binding arbitration.

Rep. Simoneau responded to the impasse resolution question by saying that Minnesota's Bureau of Mediation Services conducts mandatory mediation with all public employees, including teachers. If a new agreement has not been reached by the time the prior agreement expires, impasse is assumed to exist and labor has the option to file a ten-day notice of its intent to strike. He added that Minnesota does not provide for factfinding, though it is currently being considered.



Both men were asked if problems developed in their states when different cost figures to fund certain collective bargaining agreements were presented by different government offices. Mr. Henderson replied affirmatively, but he added that by working with the state's Legislative Fiscal Bureau the discrepancies in cost estimates are resolved and the JCER and legislature are presented with mutually agreeable cost figures.

Rep. Simoneau stated that, from the very beginning of the LCER, he has had the Senate staff, the House staff, and the Governor work together to arrive at a mutually-agreed upon figure before they present it to the LCER.

In response to a question on how position control is handled, Mr. Henderson commented that position control in Wisconsin is handled by the Department of Administration. Funds for additional positions must be appropriated by the Joint Finance Committee. He added that temporary positions can be funded from program revenues, such as federal grants or a grant from private foundations. The Department of Administration retrieves these positions when the necessary funding runs out, though.

Rep. Simoneau stated that Minnesota's situation is very similar--the House Appropriations Committee specifies a certain number of positions to fulfill agency tasks and appropriates the necessary funds. He mentioned that the exceptions to this procedure are those agencies or groups that operate on revolving funds.

The next question asked was whether Wisconsin and Minnesota negotiate the steps in the respective pay scales and how the costs are calculated. Mr. Henderson began by explaining that the pay scale steps are negotiated as a percentage of the base. Not all units receive the same step increase. He added that Wisconsin also has a statutorily required longevity increase which, similar to a bonus, is separate from the base salary.

Rep. Simoneau responded to the same question by stating Minnesota negotiates step increases only up to a certain point, depending on the job. Past this point, no longevity increases exist.

Both speakers were then asked about what changes they would make, if any, to their respective systems. Mr. Henderson pointed out that his primary concern is the current job classification procedure, adding that he would prefer a factor evaluation system similar to that used by the state's steelworkers. He went on to explain that the trouble with public sector classification is that job descriptions only describe what people in that job are doing, instead of what actually should be done in the job. Thus, a public employee is paid according to what (s)he is worth, rather than what the job is worth. Merit increases on top of this only distort the picture more. Mr. Henderson concluded that the Factor Evaluation System strives to classify, and then set a rate for, the job.

Rep. Simoneau, on the other hand, stressed that his first change would be to clearly identify state supervisors and make them a part of the state's management team. The second change would be to seek some way to prevent essential state hospital employees from striking.

Finally, Mr. Henderson and Rep. Simoneau were asked for their opinions on Montana's proposal to bring in outside consulting firms to restructure the state's classification and pay plans. Mr. Henderson responded by recommending that the state muddle through the process largely on its own, with help and ideas only from how other states accomplish the same thing. Rep. Simoneau agreed with Mr. Henderson's recommendation, but added that if Montana did decide to have an outside team of consultants, it should be someone who is familiar with the current problems faced by the state.

Mr. Henderson made one additional point concerning collective bargaining. He stressed that not all collective bargaining problems can be resolved with more money. In many cases, the state will have to examine the situation carefully to determine what the real problem is, rather than simply offer the unions more money.

The meeting was adjourned at 4:20 p.m.

#### Decisions/Accomplishments

The Commission tentatively recommended that funds be appropriated for the publishing of an index of all BPA decisions current to within six months.

Tentative decisions on other questions were postponed pending additional information.

The staff was asked to draft legislation to exclude protection of collective bargaining units from the grandfather clause of the Collective Bargaining for Public Employees Act.

#### Follow-Up Action:

<u>Task</u>	<u>Who</u>	<u>When</u>
Draft legislation clarifying that the grandfather clause in the Collective Bargaining for Public Employees Act applies only to collective bargaining agreements, not collective bargaining units, that existed prior to the adoption of the Act in 1973.	Personnel Division	April meeting
Prepare a decision chart on the issues involved in impasse resolution.	Personnel division	April meeting

# PLEASE RETURN

Minutes

## PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

A. Meeting: 2nd Floor Conference Room  
Cogswell Building  
Helena, Montana

STATE DOCUMENTS COLLECTION

B. Hearing Location: Auditorium  
Highway Department  
2701 Prospect Avenue  
Helena, Montana

MAY 12 1982

MONTANA STATE LIBRARY  
930 E. Lyndale Ave.  
Helena, Montana 59601

C. Date: April 1-2, 1982

D. Overall Objectives:

To reach tentative decisions on previously presented material and hear staff reports, public testimony and a report by an independent out-of-state review team on the state's position classification and employee pay programs.

E. Participants: April 1st - Afternoon Session

Chairman Francis Bardanoue  
Senator Fred Van Valkenburg  
Senator Jan Johnson Wolf - left at 4:00 p.m.  
Sharon Donaldson (sitting in for Jerry Driscoll)  
Richard Ferderer  
Tom Schneider  
Don Robinson - came in at 2:10 p.m.  
Marilyn Miller  
LeRoy Schramm  
Gary Wicks  
Nancy Hanson - came in at 3:45 p.m.

Representative Calvin Winslow and Jean Fitzsimmons were unable to attend.

F. Meeting Proceedings:

Chairman Bardanoue called the fifth meeting of the Personnel and Labor Relations Study Commission to order at 1:30 p.m.

### Corrections of March minutes:

(1) It was noted that the last sentence of the section on Study Question No. 6 - Part E Page 4 should be changed from "It was generally regarded as unnecessary since the number of units over the last several years has declined" to "It was generally regarded as unnecessary since the rate of increase in the number of units over the last several years has declined.".

(2) Mr. Wicks noted a correction to a statement attributed to him on page 5 section A on question A. He indicated that the first sentence of the section on Question A "all units of government should be directly responsible to the chief executive" is too broad and should be changed to indicate that there should be some administrative control and responsibility to an administrative officer.

A motion was made by Gary Wicks and seconded by LeRoy Schramm that the minutes be accepted as corrected. The Motion carried.

#### Financial Report:

Joyce Brown, Project Director, reported that the Study Commission has spent \$17,925 of its allotted \$150,000 as of the end of March. Another \$3,595 has been encumbered by the Commission and an additional \$61,000 in expenses are projected. She noted that while current and projected Commission expenditures are well within the Commission's total allotment, three areas (supplies and printing, communications and rent) were underbudgeted. She recommended increasing the budget for these areas to \$6,500 for supplies and printing, \$3,500 for communications and \$1,500 for rent; and correspondingly decreasing the amount budgeted for contracted services. Tom Schneider moved that these recommended budget changes be accepted. The motion was seconded by Richard Ferderer and passed.

#### Introduction of New Commissioners:

Chairman Bardanouve announced the resignation of Commissioners Ray Shackleford and Percy Cline and the appointments of Marilyn Miller, Executive Assistant to the Superintendent of Public Instruction, and Jean Fitzsimmons, Regional Director of Personnel for Burlington Northern, Inc.

#### Executive Session:

The Commission went into executive session for the purpose of reviewing three pieces of proposed draft legislation, hearing a follow-up staff report, and reaching tentative recommendations on Study Questions 2 and 11 involving impasse resolution methods.

#### Consideration of Draft Legislation to Implement Commission Recommendations

The first draft bill considered was entitled "An Act Authorizing the Board of Personnel Appeals to Investigate and Dismiss Complaints of Unfair Labor Practices; Amending Section 39-31-405, MCA". This bill would permit the Board of Personnel Appeals to investigate an unfair labor practice complaint and dismiss it subject to appeal if it is deemed to be unfounded.

In response to a suggestion that the term "him" in line 18 be replaced with "the person", a Commissioner observed that the use of the masculine gender to signify "he", "she", "it", etc., is standard procedure by the Legislative Council. Some Commissioners nonetheless felt that since the term "person" is used elsewhere in the bill it should be used in the amendment.

A question was raised concerning deletion of the phrase "any agent designated by the board for such purposes" from Section 1 of the bill. Ms. Brown explained that the Legislative Council had removed the phrase because it was considered unnecessary. Bob Jensen, Administrator of the Personnel Appeals Division, commented that the terms "board" and "agent" are often used interchangeably and that a deletion of the language is not a problem.

There was no public response to the proposed bill. Mr. Wicks moved that the Commission adopt the bill. The motion was seconded by Tom Schneider and passed.

The second bill considered was entitled "An Act Changing the Time When the Final Order Concerning an Unfair Labor Complaint Must be Issued; amending Section 39-31-406, MCA". This bill would clarify the beginning of the period in which the Board of Personnel Appeals' final order concerning an unfair labor practice must be issued. The proposed amendment defines the beginning of the time period as the date on which final briefs are submitted to the hearings officer.

In response to a question on whether briefs are filed in all cases, Bob Jensen, Administrator for the Board of Personnel Appeals, replied that parties wanting a quick decision will sometimes agree at the close of the hearing not to submit briefs. He added that in these cases the five-month period would begin at the close of the hearing. In response to Mr. Jensen's comments, it was first suggested that the proposed bill be changed to read, "within five months after the hearing or final briefs, if any, are submitted to the Board," and subsequently suggested that the bill be resubmitted to the Legislative Council with general directions for revision. There was no public response, and the Commission concurred with the suggestion to resubmit the bill.

The third draft bill considered was entitled "An Act to Clarify that Recognition of a Collective Bargaining Agreement Entered Into With Public Employees Prior to Enactment of Title 39, Chapter 31, MCA, does not Include Continued Recognition of Collective Bargaining Units Once the Agreement has Expired, amending Section 39-31-109, MCA."

This bill would limit protection of the grandfather clause of the Collective Bargaining for Public Employees Act to pre-act collective bargaining agreements while excluding protection for pre-act collective bargaining units once the pre-act agreement had expired.

Ms. Brown cautioned that, in the view of the Legislative Council, this amendment as presently worded could be unconstitutional in the unlikely event that pre-act collective bargaining agreements specifying unit composition are still in effect.

In the subsequent discussion, concern was expressed that the proposed language was unclear and failed to accomplish its purpose. Some felt it would have the unintended effect of allowing new bargaining units to be established every time an agreement expired.

Labor representatives, both in the Commission and in the audience, favored leaving resolution of this question to the courts.

Citing the example of highway maintenance crew supervisors, a labor Commissioner noted that the Collective Bargaining for Public Employees Act does not adequately distinguish management from employee engaged in bargaining unit work. He felt that subjecting grandfathered units to clarification procedures under current definition would aggravate the public.

Rod Sunsted, Chief of the Labor Relations Bureau, indicated that he had understood that the purpose of the proposed bill was to treat all collective bargaining units the same with respect to unit clarification, regardless of whether they existed before the Collective Bargaining for Public Employees Act. He recommended that the staff be given more time to work on the bill. Several Commissioners agreed.

Offering substitute language, Mr. Ferderer made a motion to send the bill back to the staff for further review and clarification. Discussion followed concerning the purpose and effect of Mr. Ferderer's proposed language. It was explained that the language would allow clarification of grandfathered units but it would also specify who can and cannot be removed from the unit as a supervisory member of management.

Proponents of eliminating the distinction in unit clarification procedures for pre-act/post-act units noted that Mr. Ferderer's proposed language would still provide greater protection for pre-act or grandfathered units. It was argued that while his language would technically permit clarification of grandfathered units, his addition of a difficult standard for proving that employees are management would effectively preclude the elimination of few, if any, management employees from these units. After further discussion of specific language, it was suggested that the Commission decide whether pre-and post-act units should be treated the same for purposes of unit clarification before moving to the question of the proper definition of management to be used in unit clarification proceedings. Mr. Schneider indicated that he would have to oppose legislative adoption of any amendment which eroded protection for grandfathered units unless an acceptable compromise could be reached.

Mr. Wicks moved that the staff's proposed legislation be modified to clarify that the grandfather clause is meant to treat all collective bargaining units equally with respect to unit clarification, regardless of whether they existed prior to the Collective Bargaining for Public Employees Act.

After further discussion of the possibility of reaching a compromise position, Mr. Wicks amended his motion to direct the staff to draft a spectrum of legislation ranging from the current level of protection for grandfathered units to repealing the grandfather clause and eliminating all protection. Mr. Schneider seconded the motion. The motion carried.

#### Follow-Up Staff Report on State Grievance Mechanisms for Non-Organized Employees and Avenues of Judicial Review.

Pat Schaeffer, staff attorney for the Personnel Division, presented Staff Report No. 13 on the kinds of grievances that can be appealed to or initially brought to District Court, both in the presence and in the absence of an independent grievance appeals body.

Ms. Schaeffer discussed the right of appeal through the Montana Administrative Procedure Act (MAPA). She explained that those State employees who have the right to appeal grievances to an independent board also have the right to appeal the board's decision into the court system under the Montana Administrative Procedures Act (MAPA). The Montana Administrative Procedures Act provides for judicial review of contested cases.



Employees of Fish, Wildlife and Parks and Highways have a statutory right of appeal to the Board of Personnel Appeals and consequently to the court system under MAPA. Similarly, Merit System employees have the right to appeal some grievances to the Merit System Council and consequently to the courts. Since all other State employees have no right of appeal beyond their own agencies, their grievances are not contested cases under MAPA and there is no right of appeal to the courts. She noted that creation of a grievance appeals board to hear grievances by all state employees would automatically allow all employees to appeal their grievances into the court system under MAPA.

She cautioned against too many levels of review and a resulting procedural morass.

Direct avenues into District Court outside of MAPA were also discussed. These avenues included causes of action resulting from unlawful discrimination, sexual harassment, certain maternity-related actions, improper termination, possibly improper suspension and demotion, and disciplinary action taken against an employee who exercises a constitutional right such as freedom of speech, freedom of religion, etc. Ms. Schaeffer noted that these avenues into the court system are generally available to all employees regardless of the existence of an appeal board.

The third issue discussed by Ms. Schaeffer was whether an employee's due process is violated when his/her grievance procedure ends with the agency director. Pointing out that due process requires at least a notice and an opportunity to be heard, she expressed her opinion that these employees are not denied due process since they are provided with a notice and an opportunity to be heard by an impartial committee before the grievance goes to the agency director.

In response to a question concerning the establishment of a new grievance appeals board, Ms. Schaeffer indicated that the kinds of issues to be heard by this board could be restricted. Ms. Brown added that many states utilize a two-tier system in which minor grievances go only as far as the agency director, while major grievances (usually adverse actions) go to a review board. It was agreed that such an approach would require more specific language than the language in the grievance statutes for the Departments of Highways and Fish, Wildlife and Parks which permits appeal of "serious matters".

Several Commissioners expressed concern over the MAPA right of appeal to the courts created by a grievance appeals board. One Commissioner was concerned that it would provide greater rights to non-organized employees than those negotiated by organized employees.

Several approaches to avoiding the automatic court appeal right were discussed. These included a statutory exemption from MAPA and creation of the appeal board by executive order rather than statute. Ms.

Schaeffer expressed doubts about either of these approaches but felt that further research was required. Ms. Brown suggested two possible approaches to limiting the right of appeal to the courts and requested an indication of Commission preference. The two possible approaches suggested were: (1) Limit the kinds of cases that can go to the new appeals board (and then on to District Court) to those cases that can be taken to District Court through an independent action absent an appeal board, or (2) Allow all grievances to go to the board but find some way of prohibiting appeal into the courts.

Mr. Robinson responded that the issue should not be what kinds of cases can be heard by the new board but rather, whether the board should be limited to reviewing due process questions. He stated that neither an independent body nor the court should second guess the judgment of an agency director in his/her evaluation of an employee's performance. Ms. Brown indicated that a procedural scope of review would apparently be unprecedented in a state government. Her limited review of state grievance appeal procedures revealed that none were limited to a procedural review. Mr. Blehm of Billings suggested that the new board be provided with the authority to arbitrate grievance appeals which employees wish to take beyond the agency director.

In response to a question on the composition of the proposed new board, Ms. Brown indicated that at a subsequent meeting she would provide information to the Commission regarding not only the composition of similar boards in other states, but also their scope of review, what kinds of cases are heard, etc.

#### Consideration of Study Questions 2 and 11 on Impasse Resolutions:

The Commission first considered the fact finding options previously presented in Staff Report 2. The options considered were:

- Option 1: Continue fact finding in its current form.
- Option 2: Amend the Collective Bargaining for Public Employees Act to eliminate fact finding as a step in Montana's impasse resolution procedure.
- Option 3: Amend the Collective Bargaining for Public Employees Act to grant mediators the authority to order fact finding.
- Option 4: Amend the Collective Bargaining for Public Employees Act to make fact finding mandatory once either party requests it regardless of whether the collective bargaining agreement has expired.
- Option 5: Amend the Collective Bargaining for Public Employees Act to require that both mediation and fact finding be exhausted before either party is allowed to take economic action.



After some discussion of Option 3, Mr. Robinson moved that the Commission adopt both Option 3 and Option 5. He stressed that public employees' strikes should not be prohibited but that every effort to avoid them should be required since the public interest is involved.

Several objections to the motion were raised. It would require continued work after a collective bargaining agreement had expired. It would be impractical for State government because of the time pressure involved in solving impasse prior to legislative adjournment. It would be ineffective if forced on the parties.

In response to a question on why either party would oppose fact finding, the nature of fact finding was discussed. One Commissioner felt that fact finding is effective because it mitigates emotional, irrational appeals, and that parties depending on such appeals are opposed to fact finding. Another Commissioner suggested that fact finding involves much more than just finding and presenting facts. He stated that the procedure often involves value judgement by the neutral. One Commissioner raised the prospect of excessive use of fact finding if Option 5 were adopted because bargaining representatives would feel an obligation to their constituents to push the State as far as possible rather than reaching agreement during mediation. It was felt that such a result would prohibit effective bargaining by the small State Labor Relations staff.

Mr. Robinson's motion died for lack of a second. Mr. Wicks then moved that the Commission adopt Option 3 before considering further options. Senator Van Valkenburg seconded the motion and it passed by an 8 to 2 roll call vote with Mr. Schramm and Mr. Ferderer opposed.

Mr. Robinson moved to amend Option 5 and the Collective Bargaining for Public Employees Act to require that both mediation and fact finding be exhausted in all collective bargaining negotiations except those involving State government before either party is allowed to take economic action. The revised motion also died for lack of a second.

The next impasse resolution method considered was mediation. Based on a previous discussion, the option of increased training to improve the quality of State mediators was singled out as the most promising option. Mr. Wicks moved that the Commission recommend that the Legislature make funds available to the Board of Personnel Appeals to implement a mediator training program. Tom Schneider seconded the motion.

In discussing how much money would be required to provide such training, Mr. Jensen pointed out that because of the present financial situation within the Federal Mediation and Conciliation Service (FMCS), training sources other than those previously provided by FMCS schools would have to be found. One suggestion was to coordinate Montana training efforts with those of other states. Another suggestion was to import FMCS training workshops. He estimated that this latter alternative would require \$2,500 to \$3,000. One Commissioner suggested that \$5,000 would be a reasonable figure.

In a voice vote the motion to recommend funding for mediator training passed unanimously. No specific amount was included in the motion, but the Commission asked that Mr. Jensen determine an appropriate amount.

The third impasse resolution method - interest arbitration - was scheduled for discussion but postponed until a time when Representative Winslow could be present, since he had expressed an interest in this area.

In response to an invitation for audience comments, Mr. Brent Hunter, representing the City of Billings, reiterated his concern regarding interest arbitration. He stressed that mandatory interest arbitration should not be adopted because it removes the decision-making authority of local government officials. He added that interest arbitration should only exist as part of a negotiated labor agreement, and not as State law.

Mr. Blehm, representing Billings' firefighters, corrected the language of Staff Report No. 10 by pointing out that interest arbitration is not actually mandatory for Montana's firefighters. He explained that firefighters may strike if a dispute has gone through mediation and fact finding and neither side requests arbitration. The Commission asked that this change be made in the report.

Discussion was then opened to alternative methods of impasse resolution.

The Commission rejected several alternate impasse resolution methods used by two or three other states, but considered a requirement that mediation be exhausted before economic action is allowed.

After some discussion of the difficulties involved in determining when mediation is exhausted and who should make that decision, Mr. Robinson moved that the staff develop appropriate language which would require that mediation be used to its fullest extent. Nancy Hanson seconded the motion and it passed unanimously.

The discussion then turned to whether public employees, particularly those in so-called "essential" positions, should have the right to strike. Because interest arbitration is generally the alternative to the right-to-strike, the subject was postponed for consideration with the subject of interest arbitration.

The next issue considered was whether striking public employees, particularly those in "essential" positions, should be eligible for unemployment benefits. Senator Van Valkenburg moved to adopt Option 1 ("continue the current practice of granting benefits to all striking public employees as long as work does not stop"). The motion was seconded by Tom Schneider.

The possibility was raised that the difficulty in defining "work stoppage" was the major problem. Senator Van Valkenburg responded that work stoppage had been defined by the Labor Appeals Board and the courts, albeit in a way that was controversial. Expressing the belief that striking employees should not be granted benefits in those instances in which the employer has no option but to continue work (hospital persons, etc.), Mr. Schramm offered a substitute motion that the current practice be continued, with the exception that no benefits be paid to public employees when essential work is performed which the employer has no practical alternative but to continue in the event of a strike.

In response to the suggestion that this exception would give the employer an unfair advantage, Mr. Schramm responded that the monetary cost of keeping a facility under strike in operation plus adverse public opinion precluded such an advantage.

In opposition to the substitute motion, Senator Van Valkenburg questioned what would be lost by granting benefits to striking employees in these situations. He also questioned whether strikes are unduly prolonged if strikers are granted benefits and reminded the Commission that this same issue was debated and decided upon by each of the last two Legislatures. He felt that it should not be brought up again.

Mr. Schramm responded by stating that no large benefit payment had been made prior to these debates. He added that this is an important issue, since large benefit payments to striking public employees affect contributions required for the unemployment fund. In further discussion it was pointed out that public opinion is not as strong against the right of public employees to strike as it is against striking employees being paid.

A labor representative noted that unemployment benefits are not automatic for striking employees. They are generally not awarded until after lengthy deliberation to determine if an unfair labor practice has occurred.

Mr. Schramm observed that his substitute motion was not intended to change the practice of paying benefits to strikers in a situation where an unfair labor practice has caused the strike. He added that the current law allows benefits as long as a work stoppage does not occur, regardless of whether an unfair labor practice has been committed.

It was observed that unemployment benefits are intended to provide compensation for those employees who, through no fault of their own, are unemployed as opposed to employees who voluntarily terminate their employment by a strike.

Mr. Wicks suggested that the Commission adopt an amended version of Option 1 which would clearly define what constitutes a "work stoppage".

At 5:00 p.m. Chairman Bardanouve called for a motion to recess the meeting to give everyone time to eat and get to the public hearing at 7:00 p.m. The motion was made, seconded and passed.

April 1, 1982

Evening Hearing

A. Overall Objectives:

To hear public testimony on the State's position classification and employee pay programs and on other personnel and labor relations issues of interest to the public.

B. Participants:

Chairman Francis Bardanouve  
Senator Van Valkenburg  
Sharon Donaldson (sitting in for Jerry Driscoll)  
Tom Schneider  
Nancy Hanson  
Marilyn Miller  
Don Robinson  
LeRoy Schramm  
Gary Wicks

Senator Jan Johnson Wolf, Representative Calvin Winslow, Jean Fitzsimmons and Richard Ferderer were unable to attend.

C. Proceedings:

Chairman Francis Bardanouve called the hearing to order at 7:15 p.m. and called on those individuals who had signed up to present their testimony. The testimony was as follows:

Ellen Feaver, Director of the Department of Revenue, indicated that the pay plan is inadequate to retain talented employees and consequently, encourages manipulation of the classification system by managers attempting to obtain adequate pay for their valued employees through the mechanism of a classification adjustment. She expressed the feeling that the system fails to provide adequate incentives to employees to take on the increased responsibility of supervisory positions and that it actually penalizes valuable long-term employees who reach the top of the pay range.

She suggested the solution of broad classifications - for managers, technicians, etc. - with appropriate pay ranges and flexibility for managers to select an employee's salary within the pay range consistent with performance level.

Sue Carkeek, Personnel Director for the University of Montana representing the University System, expressed the view that the current classification system should not be replaced because of the disruption it would involve, but should be modified as follows:

- Current efforts to improve the classification specifications should be continued.
- A point factoring system (a quantitative system) should be developed to increase objectivity and promote internal equity.

- The limited experiments with decentralization (delegation of first line position classification) should be expanded.

She recommended more major changes in the pay plan as follows:

- Eliminate automatic annual step increases because they result in unequal pay for equal work (the long-term employee does not necessarily perform better or do more work than a more recent employee), they result in some employees receiving more pay than their supervisors and employees at the maximum step are dead ended.
- Institute a three-step system with step 1 for new hires, step 2 for employees who have passed probation and step 3 for employees who have reached proficiency.
- Permit movement through the steps based on performance level rather than length of service.
- Institute limited performance pay for those employees at step 3 who demonstrate superior performance.
- Provide longevity pay for every 5 years of service.
- Establish an annual pay matrix based on a salary survey of entry pay for step 1 and proficiency pay for step 3 to ensure the plan is competitive in the labor market.
- Keep as many employees as possible on a single pay plan to assure internal equity.

Jan Gilman representing the Interdepartmental Coordinating Committee for Women indicated that the current classification system as well as those under consideration disadvantages women by assigning greater weight to men's jobs, and recommended increased emphasis on comparable worth or internal equity. She said that attempts to achieve market comparability should not penalize employees in traditionally female jobs that are generally underpaid for their skill level in the market.

She expressed opposition to the ceiling on step increases because it penalizes senior employees and to decentralization of classification because of the expectation that agencies would be less neutral than the central Classification Bureau staff.

She spoke in favor of merit bonuses, a continued classification appeals process and the option of adjusting the grade rather than the step for a pay exception. Improvement of the State's insurance package in line with private company packages and state involvement in day care services were suggested.

Cindy Anders, a Department of Revenue employee indicated that the ten dollar longevity increase for each five years of service is a slap in the face and provides no incentive. She also suggested that the health plan be expanded to cover glasses and more dental expenses.

Candy Brown, representing the Governor's Advisory Council for the Employment of Women indicated that many jobs in the classification system are not provided equal pay for equal responsibility and that all jobs should be reevaluated to insure that comparable worth is achieved.

David Sexton, with the Montana Education Association said that his organization represents teachers at the State institutions which are under their own pay plan. He indicated support for the plan, which is similar to most teacher pay plans, but dissatisfaction with the level of funding. Despite more difficult students, institution teachers are paid less than teachers in the community resulting in recruitment problems, he said. He recommended pay comparable to the community market.

George Paul, an employee of the Department of Agriculture expressed general satisfaction with the State system and its degree of management flexibility, but felt there was some built-in differences in the perspective of long-term career employees and short-term appointed top managers. An incentive program would be an improvement, he said.

Bradley Bruce, an Engineer from the Highway Department objected to the thirteen-step structure of the pay matrix because employees who peak out at step 13 no longer receive full cost of living increases. He observed that the Legislature uses step increases as part of the cost of living adjustment, and, consequently, employees who receive no step increase, receive only partial cost of living increases. He also spoke in favor of a cash option to insurance benefits.

Stephen Herzog, an Engineer with the Highway Department pointed to the technical expertise, professionalism and high level of performance of State employees and expressed his support for performance based pay to retain high quality employees and alleviate pay compression.

Eileen Robbins representing the Montana Nurses Association indicated that nurses, a traditionally female occupation, are underpaid for the increasing level of responsibility they exercise, and that institution nurses are paid less and provided fewer benefits than nurses in the private sector. Private sector nurses in communities surrounding the institutions receive between 80¢ and \$2.00 per hour more in starting salaries, she said.

She expressed the view that this difference plus failure of the Legislature to fund shift differentials contributes to shortages of nurses willing to work in the public sector and should be corrected.

Linda Steel, representing the Montana Chapter of the American Statistical Association (ASA) indicated that a national salary survey conducted by the Department of Energy reveals that Montana pays its statisticians less than the amount paid to 90% of all statisticians in the United States. She attributed this to a lack of understanding of the profession on the part of the Classification Bureau staff.



Commenting that few ASA recommendations made at a previous meeting with the Classification Bureau staff had been adopted, she recommended another meeting to correct the class specifications for statisticians.

Specific concerns raised were (1) class specification language allowing equivalent education or experience as substitute minimum qualifications for specialized academic preparation, (2) unwritten class specifications (such as mathematical statistician I and II) which make appeals difficult, and (3) the absence of professional advancement opportunity and, consequently, pressure on professionals to move into managerial positions.

Ms. Steel endorsed the training policy of the Department of Natural Resources which pays partial costs of sending employees to professional meetings.

Tom Schneider, with the Montana Public Services Commission expressed the need for the salaries of public sector regulatory employees to be competitive with those of private sector employees if there is to be any hope of effective regulation. Regulatory employees must work with very well-trained, well-prepared high level private sector personnel, he said.

He also voiced opposition to the consideration of "agency size" in classification decisions where it is irrelevant and to the disparity in pay between the legislative and executive branches of government.

In response to an invitation for testimony from anyone in the audience, the following testimony was provided:

Ed Sheehy, a retired Federal worker suggested that the compression between grades be corrected and that quarterly as opposed to annual increases be provided. He expressed support for the concept of equal pay for equal work as well as for exceptions for hard-to-fill positions.

Dennis Taylor, Administrator for the Personnel Division thanked participants for aiding the Personnel Division with its critical self-evaluation, and observed that compared to many states who have had "classification systems" for 50 plus years, Montana is still in its infancy (only seven years old) and still learning and improving.

Noting the tendency of employees to confuse classification and pay operations, he described these operations and encouraged participants to direct their criticism to the operation responsible for the perceived problem.

He expressed the hope that the evaluation under way would help determine if the classification system should be replaced or is sound and should be retained with the improvements in progress. He described these improvements as a project to update class specifications and a pilot project to test the feasibility of delegating first line position classification to operating agencies.

He also expressed the belief that the major source of criticism is the pay plan's failure to provide performance-based pay. He expressed his support for performance-based awards -- either monetary or non-monetary to improve employee motivation and productivity -- and the need to base them on an objective job-related performance appraisal system.



Stan Miller, an Engineer with the Highway Department discussed classification and appeals processes that resulted in inequities and problems involved in performance appraisal.

Joe Geraghty, representing local 971, AFSCME expressed the belief that the State should pay for the job, not the person in it. He indicated that the current system of longevity increases is fairly good, that people are only now beginning to feel comfortable with it and that it should be retained.

Gary Watt, an employee of the Office of Public Instruction recalled the initial intent of using step increases for merit awards and the failure of that to materialize. He recommended a standard cost-of-living increase plus merit pay in the form of a bonus for extra work.

He also described the lack of training and turnover that plagued early efforts of Classification Bureau staff and expressed the hope that the problems created could be corrected through a more professional, more pleasant process than the classification appeals process.

Lacking a response to a call for any additional testimony, Chairman Bardanoue adjourned the session at 9:45 p.m.

April 2, 1982  
Morning Session

A. Overall Objectives:

To hear staff reports on classification and pay and a report of the independent review and evaluation team.

B. Participants:

Chairman Francis Bardanouve  
Senator Fred Van Valkenburg  
Senator Jan Johnson Wolf  
Sharon Donaldson (sitting in for Jerry Driscoll)  
Richard Ferderer  
Tom Schneider  
Don Robinson  
Marilyn Miller  
LeRoy Schramm  
Gary Wicks  
Nancy Hanson

Representative Calvin Winslow and Jean Fitzsimmons were unable to attend.

C. Meeting Proceedings:

Chairman Francis Bardanouve called the meeting to order at 9:05 a.m.

Joyce Brown opened the session by providing an overview of the four (4) major operations involved in position classification and pay. She indicated that a recent staff survey of State managers revealed extensive confusion over these operations and their contribution to perceived problems with the overall system.

The four (4) operations described were: (1) Grouping positions into classes -- a Classification Bureau function, (2) Ranking classes into grades or skill levels -- a Classification Bureau function, (3) Assigning dollars to grades (creation of a pay matrix) -- a legislative function based on negotiated agreements and recommendations of the Personnel Division and Budget Office, (4) Determining how individuals will receive pay increases over time -- established by law, rules promulgated by the Department of Administration and negotiated agreements.

Ms. Brown indicated that Staff Report No. 12, Position Classification, would involve operations 1 and 2 while Staff Report No. 11 on Employee Compensation would involve operations 3 and 4.

Staff Report No. 12, Position Classification, by John McEwen, Chief of the Classification Bureau.

Mr. McEwen reiterated that classification and pay are two separate functions and that classification takes considerably more time than determining a pay matrix or promulgating pay plan rules.

He described the classification process as a four-step operation: (1) fact finding about jobs (job analysis), (2) grouping jobs that are similar into classes, (3) deciding the relative ranking of the classes against each other (job evaluation), and (4) documenting the results of the process. (The State uses class specifications.)

The classification of a secretarial position (as described in a position description) was illustrated, and the relative abilities of the Classification Bureau and operating agency staffs to classify positions were discussed. Mr. McEwen noted that each agency has access to class specifications and can classify the position by finding the class specification of best match. He indicated that the Classification Bureau's only advantage over the operating agency is greater training and the benefit of knowing how all the State's secretarial positions have been assigned to secretarial class specifications.

Mr. McEwen summarized the Bureau's daily activities as follows: The Bureau handles the classification or reclassification of positions which have been submitted by department heads for classification or review with a monthly volume of approximately 140 to 160 requests. In addition, the Bureau handles appeals from employees who feel they aren't correctly classified. (Investigation of appeals involves interviewing the employee and co-workers on the job site.) The Bureau also conducts reviews of an entire class or class series.

Mr. McEwen noted that since 1975 the most significant change in the classification system was the change from a quantitative to a non-quantitative job evaluation methodology. The former methodology involved several separate decisions (such as the degree of authority exercised and amount of supervision received) which were each quantified and combined to determine the grade level of a classification. The non-quantitative methodology involves similar considerations (on the degree of authority exercised, etc.) but only one decision on the appropriate grade level. Mr. McEwen explained that the switch was made because the quantitative method was poorly designed, but that critics complain about the non-quantitative method as being less objective.

A staff survey of management perceptions of the effectiveness of the classification system was then discussed and the results summarized as follows: Sixty percent of State managers feel that the Classification Bureau groups similar positions together reasonably or very well while forty percent feel that the Bureau performs this function somewhat or very poorly. Survey comments included the following criticisms: general class specifications fail to take into account unique positions; there is manipulation of the system because of inflated job descriptions being submitted by agencies; Classification Bureau staff does not understand some jobs. Other criticisms included failure of the system to consider workload and performance revealing a misunderstanding of the nature of classification and frustrations with the pay plan.

Another item surveyed dealt with the ranking of classes. The survey revealed that sixty-four percent of the respondents feel the Bureau does reasonably well in providing internal equity in its ranking of classifications, while thirty-six percent feel that Bureau performs somewhat or very poorly in this respect. Many survey comments involved lack of performance pay, lack of competitive salaries, and inadequate advancement opportunities, again indicating extensive confusion of classification and pay operations. A forced ranking of five classification and compensation

objectives revealed that managers place greater priority on reaching two compensation objectives --(providing a sufficient level of pay over time to retain experienced employees, and providing performance-based pay) than on the classification objectives of providing internal pay equity according to the relative level of difficulty and responsibility of the work performed or providing equal pay for equal work.

Mr. McEwen then presented the Classification Bureau's own evaluation of its operation. He listed the following problem areas: (1) Class specifications are presently unclear and imprecise because of the lack of time spent in developing them originally; (2) Management has never fully understood the system; (3) The non-quantitative job evaluation method used is considered too subjective by many because the analyst's judgments are not down on paper.

Mr. McEwen expressed the belief that the first problem would be largely corrected by the end of the year as a result of the current concerted effort to update class specifications, and that the second problem could be corrected with increased training. He discussed several possible options for the third problem:

Option 1: Continue with the current system (including planned improvements) since (a) it is basically a sound system used by a number of states, (b) a reshuffling of established relationships would be disruptive, and (c) the anticipated degree of precision achieved by moving to a new system would be of questionable cost effectiveness. This option does not address the criticism that the current non-quantitative system is too subjective, he said.

Option 2: Adopt a new quantitative system -- either the Hay Guide Chart Profile Method, the most commonly used system in private industry, or the Factor Ranking System (FRS), specifically designed for government jobs and currently in use in the Federal Government and several states.

Mr. McEwen noted that these systems each have their advantages and disadvantages. The Hay System has the advantage of being well accepted, providing thirty years of Hay experience in job evaluation and pay administration and using the same factors to evaluate all jobs, assuring that all jobs can be ranked with respect to each other for maximum internal equity.

The Hay System has the disadvantage of being a proprietary system and costly (at least \$75,000). Critics complain that its single set of factors favor professional and managerial jobs to the detriment of craft jobs.

The Factor Ranking System has the advantage of (a) being designed for government jobs, (b) being accessible without cost, and (c) using different factors to evaluate different types of jobs. The latter feature

permits better distinction between similar jobs. For example, it permits clearer distinctions between clerical jobs, but hinder the relative ranking of all jobs (clerical jobs with respect to craft jobs).

Option 3: Modify the current method into a quantitative method using practices and techniques of both the Hay System and the Factor Ranking System. This option has several advantages: (a) it overcomes the objection that the non-quantitative system is too subjective without creating the disruption that introducing a new system would entail; (b) there is evidence that this approach can work since it was used in the executive series; (c) it can be designed to specifically fit the needs of Montana State Government; and (d) those parts of the system that are already quantitative can be retained (the executive series and blue collar series). It would have the disadvantage of requiring more staff time.

In response to a question on managerial reaction to the current system, Mr. McEwen stated that for the most part there is pretty good acceptance, but that a small group of managers consistently resist the entire methodology. He could not comment on performance differences between managers who accept and reject the system but indicated that he felt that employees under the latter group suffer from uncertainty and dissatisfaction. He listed complaints voiced by employees as: inability to identify their own job with the class specification and the feeling that they are unfairly graded as compared to other employees.

In response to a comment that managers complain of the time employees waste in "comparison shopping" to find someone performing the same kind of work but classified higher, Mr. McEwen pointed some of the reasons for unequal grades for equal jobs. These are: (1) that some jobs were originally misclassified and have not yet been caught and, (2) managers have changed the job descriptions for some jobs without notifying the Bureau. He noted that in the last one and one-half years the Bureau has made about 1700 classification changes. In response to further questions, he conceded that many of the changes involved a grade increase but that the average grade increase has been only .2 percent.

In further discussion of classification procedures, Mr. McEwen responded to a question on whether external comparisons are ever made when determining the appropriate grades of a classification. He indicated that this was only done to the extent that the Bureau occasionally polls other states to verify that their grade assignments are reasonably comparable. He observed that pay exceptions are available for classifications assigned to grades with inadequate pay to attract and retain employees.

Classification appeals were discussed and two factors resulting in employee classification appeals were noted. These were: (1) pre-existing agency classification systems in two or three agencies, (The new central system upset established relationships which generated appeals.) and, (2) failure of the Legislature to provide adequate cost of living increases. (Employees attempted to maintain their buying power by obtaining a grade increase.)

A Commissioner observed that craft positions were initially classified along with other State positions but as a result of the negotiation of pay grades allowed at the time, the grades were changed, and a separate classification system was subsequently created.

In response to a question on whether salaries are ever decreased as a result of reclassification, Mr. McEwen stated that there are two circumstances under which jobs are reclassified downward and that the salary adjustment made depends on the circumstance. If the duties are decreased, resulting in reclassification, there is salary protection for the employee for six months followed by an appropriate decrease. If the position is reclassified downward because of previous misclassification, permanent salary protection is provided. He pointed out that this procedure is specified in the pay rules.

In a discussion of agency attempts to manipulate the system and the Classification Bureau's response, Mr. McEwen estimated that position duties are artificially inflated in 15% to 20% of agency requests for upgrades. If evidence of this can be found, the request is denied, he said, but if no such evidence is available, the Bureau approves the request despite a reasonable suspicion that the duties are inflated.

A Commissioner observed that the apparent room for subjectivity is a major source of employee frustration--that there is always the sense that the analyst's judgment could be biased by outside events, i.e. fight with wife, husband, etc. Use of a factoring sheet which would permit the employee to to see the basis of the judgment was suggested. Mr. McEwen agreed, but he pointed out that the same judgments would be made albeit with a number attached. He observed that a written explanation of the decision is provided in appeals cases.

Don Benson of the Department of Revenue asked Mr. McEwen if there were reasons why the Classification Bureau had changed from a quantitative system to a non-quantitative system other than to prevent manipulation of the system by the different agencies. Other reasons cited by Mr. McEwen were (1) that the old system was poorly designed, (the poor choice and definition of factors and heavy emphasis on education and experience requirements permitted easy manipulation) and (2) that the factor sheet was never intended to be a public document.

It was observed that the Bureau must have the power to downgrade as well as upgrade positions if the proposal to delegate first line classification authority to the agencies is adopted.

#### Report by Dr. Dick Olufs

Dr. Olufs, from the University of Montana, requested and was given a few minutes to present his views on classification. He observed that most classification systems have two limited objectives: (1) to control the amount of money spent on personnel, and (2) to insure pay equity. He argued that the option of adopting an expensive point system to take the human element out of classification can only be expected to marginally improve the State's ability to meet a very limited objective - pay equity. He asserted that it will not help agencies achieve their program objectives and probably won't be cost effective.

He urged the Commission to undertake more ambitious objectives if a substantial sum of money is to be spent on a new system. Asserting that results-oriented classification systems are the systems of the future (although not currently in existence), he suggested exploration of a system based on performance standards rather than job duties.

Procedures for measuring results were discussed but no resolution of the difficulties involved was reached.

Staff Report No. 11, Sections 1 and 2 - Joe Michaud, Administrative Officer, Employee Benefits Bureau.

Mr. Michaud listed two objectives of the first part of Staff Report No. 11: providing the Commission with information on established compensation concepts and illustrating the effect of pay administration in State government.

He noted two widely accepted compensation concepts: (1) higher performance and productivity levels are achieved when pay is perceived by the employee to be linked to employee efforts, and (2) when pay is less than what the employee expects, increased turnover, absenteeism, job dissatisfaction and adverse performance will most likely follow.

He observed that an employee's pay expectations and level of satisfaction is determined by perception of internal equity (how fairly the person is paid in relationship to others in the organization) and external equity (how fairly the person is paid in relationship to others outside the organization.) Internal equity has been proven to be the most influential of the two, he said.

Mr. Michaud summarized the effects of changes to the State's pay matrix since its implementation in 1973 as follows: General increases to the pay matrix in the form of flat dollar amounts or flat dollar amounts plus a percentage increase have produced compression between pay grades resulting in two adverse effects:

1. In the lower grades where compression between adjacent grades is particularly acute (because there have been no corrective adjustments at that level) there are insufficient monetary incentives for employees to accept the increased responsibility involved in supervisory positions.
2. At the higher grades, comparison between adjacent grades has been reduced by corrective adjustments but compression with respect to lower grades and erosion of purchasing power continues to be a problem. While the rate of pay increase for lower grades since 1973 has generally equalled the rate of increase in the cost of living, the rate of increase for upper grades is below the rate of increase of the cost of living resulting in greater and greater erosion of purchasing power.

Mr. Michaud also pointed out an increasingly evident problem with the original design of the pay matrix - the thirteen steps per grade structure. The average salary paid to employees at a particular grade level is moving farther out in the salary range as the distribution of employees shift toward the higher steps. The further the average salary moves toward the maximum step, the harder it becomes to maintain a workable relationship between the hiring rate and the average salary paid to proficient workers.



Staff Report No. 11, Sections 3 and 4 - Mark Cress, Chief, Employee Relations Bureau

Mr. Cress presented a summary of staff recommendations on general and individual pay increases stating that general pay increases are those that adjust the dollars of the vertical grade levels establishing a new pay matrix; and individual increases are adjustments that change a person's pay over time or their horizontal movement within the pay matrix. He explained that the recommendations came from a committee of researchers in the Personnel Division that had examined the kinds of problems experienced with the current plan and had surveyed a large range of literature and other systems that are being used around the country.

Mr. Cress reported that the committee found the procedure for establishing a general pay increase largely adequate but recommended the following adjustments:

1. Establish a "going rate" within each pay grade which corresponds to the average salary paid by other employers in the labor market.
2. Take steps to reduce disparate pay between different branches of State government.
3. Make general pay increases in such a way as to maintain the relationship between grades rather than producing compression.

Indicating that procedures for providing individual pay increases is the major problem area, Mr. Cress recommended the following measures:

1. Eliminate automatic step increases.
2. Establish a "going rate" in each pay grade based on the average labor market salary for jobs at that skill level to serve as the normal rate of pay for proficient employees.
3. Allow more rapid advancement to the going rate.
4. Provide for more rapid advancement of superior performers.
5. Provide for advancement above the going rate only for those employees who exhibit superior performance, and require continued superior performance in order for the employee to maintain that position.
6. Do not provide advancement to employees who do not meet job requirements.
7. Provide at least a portion of performance pay in the form of an increase to base pay (as in recommendations 4 and 5).
8. Provide a portion of performance pay in the form of a lump sum or bonus to award employees for periodic superior performance due to isolated motivational or situational factors.
9. Provide a larger portion of an individual pay increase as performance pay for those employees at the higher grades to recognize the greater impact of performance on agency output. The larger portion of an

individual pay increase at the lower grades would be longevity pay resulting in smaller differences in salary between employees.

#### Section 4 - Sample Pay Systems

Mr. Cress described two basic plans which incorporate the above recommendations to varying degrees - an open range plan without steps and a step plan.

He noted that open ranges permit greater flexibility. They permit pay increases to be established by specific rules or formulas which generally take into account (1) the employee's level of performance, (2) the employee's current position in the pay range, and (3) the grade level (rules may be varied to accommodate different grade levels or groups, i.e., performance level could account for a larger part of the increase for upper grades).

He indicated that open range plans generally use a mid-point approach. The mid-point represents the going rate. Employees may advance rapidly to this point depending upon performance, but advancement beyond the mid-point is more difficult, depending on superior performance, and is lost with declining performance.

He also described a modified open range plan with three sections: a minimum pay range for those who do not meet job requirements (normally new people who have not yet attained proficiency), a medium or market range for employees who meet all job requirements (for most employees), and a premium pay range for employees who exceed job requirements.

Two mechanisms were described for distributing performance pay in an open range system. One involved a matrix of percentage increases to be awarded to employees depending on their level of performance and position in the range. For example, a superior performer working below the going rate would receive a larger increase (to accelerate his advancement to the going rate) than a superior performer above the going rate who is already relatively well paid. To control the performance pay budget, this mechanism necessitates a forced ranking of employees so that for every employee in the superior group, there is one in the below average group.

The other mechanism described involves the assignment of points for various levels of performance (varying with employees' positions in the range). The total number of performance pay dollars are then divided by the total number of points to determine the dollar increase for each performance point. Mr. Cress explained that this mechanism avoids a forced distribution which might not fit the actual performance pattern of a staff while controlling the number of performance dollars which can be spent.

A step plan was described which involved a probationary step, a proficiency or going rate step, and premium pay steps for superior performance.

In response to questions, Mr. Cress noted that a "results" based performance appraisal system limits favoritism. He also noted that the budget control mechanisms described limit the tendency of management to inflate performance.

Mr. Schneider interjected that he did not feel comfortable with a discussion on pay plans because it is a negotiable item decided at the bargaining table.

At 12:00 p.m. the session adjourned for lunch.

April 2, 1982

Afternoon Session

Chairman Bardanouve called the session to order at 1:35 p.m.

He began the afternoon session by introducing three classification and compensation officials from Colorado, Wisconsin and Idaho who had been brought to Montana under contract to review and evaluate the State's classification and pay system and suggest areas of change. The officials were Ronald Nielsen from Colorado, Glen Blahnik from Wisconsin and Richard Hutchinson from Idaho.

Presentation of Findings and Recommendations of the Review Team

Mr. Hutchinson made the initial presentation stating that the material he was presenting represented the views of all three consultants. He observed that the criticisms of the consulting team were measurably like the views already presented in previous testimony, and commended the Personnel Division for the degree of acceptance achieved in its few short years of operation. He presented the Commission with findings and recommendations in three main areas: classification, compensation and appeals.

CLASSIFICATION

Findings:

- Most of the complaints about the system stem from its hurried implementation by an untrained staff in 1975.
- The system was implemented without clear standards.
- Given the sophistication of the standards it was overly ambitious. Too many classes and levels were established.
- These problems coupled with the right of appeal resulted in numerous appeals.
- Because of the large number of appeals, the Classification Bureau staff was placed in a reactive posture. It had to expend its resources on defending the system rather than on improving or maintaining it.
- This has resulted in continuing inadequacy in classification standards and class specifications despite efforts to make improvements.

Recommendations:

- Conduct a planned analysis and rewrite of old class specifications.
- Use a task force approach including agency representatives to boost the capacity of the Personnel Division staff and receive better information on job content. The standards for determining what positions are part of the class (class specifications) should be established by the task force. (A special project to review and rewrite class specifications which includes agency personnel is currently under way.)

- The standards for determining the skill level or grade of each class should be clarified.
- Agency personnel using the system should be trained.
- Agencies should invest in professional personnel officers.
- First line classification should be delegated to the agencies that have the capacity to handle it.
- Positions should be reclassified where appropriate according to class specifications - not according to the classification of someone who is allegedly doing the same work. If the latter approach is used and the reference position is misclassified, the problem is compounded.
- Conduct periodic maintenance reviews by class series and by agency.

### COMPENSATION

#### Findings:

- Providing step increases based on longevity to the exclusion of merit based pay is ill advised.
- Compression of the pay matrix is a problem. The difference in pay between upper and lower level jobs is decreasing.
- There are insufficient numbers of useable grades in the pay matrix.
- The standards for allocating classes to skill levels or grades are unclear.
- There is an undesirable disparity in the pay received by employees on the blue collar plan and employees who are performing the same work outside the blue collar plan.

#### Recommendations:

- Provide merit pay separate from cost of living adjustments.
- Develop clear standards for allocating classes to grades.
- Consider a new pay matrix to provide more grades but only two or three steps.
- Consider non-base-building bonus pay for superior performance.
- Maintain a pay plan that is competitive with pay provided in the labor market.
- Make grade rather than step adjustments when a pay exception is needed for hard-to-fill positions.

- Compensate non-union craft employees at the same rate as craft employees on the blue collar plan.
- Establish better career ladders and delegate employee movement on the ladders to agencies.

#### APPEALS PROCESS

##### Findings:

- The Board of Personnel Appeals could not be expected to make consistent decisions given the lack of clear standards or class specifications.
- The situation is now stabilized. The backlog will soon be eliminated. The number of appeals has fallen off.

##### Recommendations:

- Clarify classification standards or specifications.

#### Presentation by Glen Blahnik on Wisconsin System

Mr. Blahnik indicated that the State of Wisconsin has 35,000 classified employees with 28,000 under contract. There are 1800 classifications and 14 pay schedules, 12 of which provide contractually bargained pay adjustments. He noted that 500 of the State's 1800 classifications were created to identify employees in bargaining units and are duplicative.

He described the State's pay schedules as follows: the general schedule including 23 pay ranges and employees at all levels up through the Governor. The other pay schedules are: clerical, blue collar (excluding crafts), crafts, security and public safety, technical, research and statistics, legal, patient care, social services, education, engineering, science and physicians. Top administrative personnel and non-academic personnel of the University System are included in the appropriate schedule.

Mr. Blahnik indicated that three classification methods are employed: (1) a whole job non-quantitative procedure similar to Montana's, (2) the Hay method for clerical positions -- now being abandoned, and (3) the factor evaluation system. The State will be converting its entire system to the factor evaluation system over the next six years by occupational group. Mr. Blahnik indicated that in his opinion, a careful conversion is preferable to pitching an old system and starting over.

The seven factors used in Wisconsin's factor evaluation system were described as:

- (1) Scope and impact of work
- (2) Complexity
- (3) Knowledge and skill required
- (4) Public contacts and/or purpose of contact
- (5) Discretion and accountability
- (6) Physical demands (applied to some positions only)
- (7) Work environment (applied to some positions only)

The requirements for implementing the system were described as follows:

- (1) Develop accurate position descriptions (characterizing a position with respect to the seven factors)
- (2) Identify benchmark positions within occupational groups (a typical position)
- (3) Form a committee to evaluate each position by: (a) ranking the whole position with respect to the benchmark position, (b) ranking it on each factor, (c) weighting each factor according to importance for the position
- (4) Identify classes
- (5) Write specifications
- (6) Create a pay line

Mr. Blahnik described the appeals system as a two track system:

- (1) One Commission hears Merit System issues - issues that are not bargainable, i.e. anything decided by the Administrator of Personnel including classification, examination, certification; actions of appointing authorities---demotions, layoff, suspensions, discharges and equal rights appeals pertaining to State employment.
- (2) Another body, the Employee Relations Commission, hears contractual issues, particularly grievances.

#### Presentation by Ronald Nielsen on the Colorado System

Mr. Nielsen indicated that Colorado has 1500 classes, 28,000 employees and uses a position classification system that is very similar to Montana's.

He explained that they are beginning to experiment with factor evaluation methods for management positions down into clerical positions to determine the feasibility of that method. Having experience with both quantitative and non-quantitative systems, he observed that they both work, although one system might be preferable for a particular group of jobs. He questioned the notion that non-quantitative methods are more subjective, stating that both methods are subjective. Quantitative systems require small subjective decisions rather than one big one, he said.

He noted that Colorado's classification process is decentralized. The central staff is responsible for the maintenance of the classification and compensation plans, but administration is decentralized under a contractual arrangement permitting withdrawal for non-performance.

Pay procedures were described as market based. The State is statutorily required to pay the prevailing wage for all occupational groups based on salary surveys. Occupational groups are independently positioned within the State's system of 99 pay grades based on the appropriate rate of pay (the pay that matches the prevailing rate) rather than on the basis of their relative skill levels. There is no attempt to achieve internal equity (or pay according to skill level) across occupational groups. Mr. Nielsen noted that the State has worked under a prevailing market system for fifteen years and it works.

The State has employee organizations but is not unionized. He indicated that craft unions establish the wage rate for State craft workers unlike others because they determine the prevailing rate.

On the topic of performance pay, he observed that until last year's passage of a pay for performance statute, pay increases were based entirely on annual longevity steps. He predicted that pay for performance will be applied only to managerial and professional positions and will involve establishing several short pay ranges for each class -- entry, probationary, proficiency and a performance range up to 15% above market. As envisioned, it will also require managers to select a percentage of employees to receive non-base-building bonuses.

Mr. Nielsen described the appeals process as formal involving a single board to hear all appeals including classification appeals.

In response to a question on what employers are surveyed, Mr. Nielsen indicated that only the Denver area is surveyed because 80% of its employees work in that area and only employers regarded as competitors are surveyed.

Observing that a market based system is often criticized because it fails to provide "comparable worth" or pay according to skill level (particularly for female dominant occupations), he argued that the Denver market is mature enough to handle the problem. He indicated that nurses are higher paid than most other professionals except engineers and physical scientists; and clerical workers are higher paid than janitors and custodians.

#### Presentation by Mr. Hutchinson on the Idaho System

Mr. Hutchinson indicated that Idaho had a whole position classification system very similar to Montana's but moved to the Hay System as a result of legislative concern over classification increases.

He described the implementation as follows: The State contracted with Hay and Associates for \$50,000 in 1975 to have a team come in and train some committees, evaluate some jobs and produce a package. The package was disappointing and the Legislature recommended delay of implementation until 1977. In the interim, the Classification Bureau made corrections to problem classes. At the time of implementation, the Legislature permitted employees six months in which to appeal the points assigned to their class. Five hundred twenty classifications (or 20%) were appealed but the number decreased after some resulted in downward adjustments. In 1979, pay for performance was introduced by the Legislature, the appeals were largely caught up, and by 1980 relative stability was achieved. However, the 1982 Legislature established a legislative committee to reevaluate the system because of the continued costs of funding pay increases.

Mr. Hutchinson indicated that maintenance of the Hay System is much more difficult than Hay and Associates would have one believe, but that the system does have some advantages. He described the major advantages as internal equity or pay according to skill level with external comparability.

He described the procedure for obtaining internal equity as follows: Four guidecharts or measuring instruments are used to evaluate different kinds of jobs. Jobs are evaluated for "know how, problem solving, accountability and working conditions" and assigned an appropriate number of points based on the



degree to which they possess these four factors. One of the criticisms noted was the relatively heavy emphasis on "accountability" which favors managerial positions. Mr. Hutchinson expressed the belief that the weight given "accountability" was appropriate. He noted that, contrary to the Staff Report, "working conditions" is considered in the Hay System and special guidecharts provided.

Mr. Hutchinson further discussed the role of Hay's pay procedures in achieving internal equity as follows: After jobs are evaluated, a pay line is established indicating the number of dollars provided per number of points. Pay for jobs with a given number of points is based on the average salary for similar jobs in the labor market. If the classifications of chief clerk and highway maintenance officer have the same number of points, they will be paid the same (an average salary) even though chief clerks might be paid less in the labor market and highway maintenance officers more. If the pay line rate for highway maintenance officers is so far off the market that recruitment problems are created, a temporary pay exception is made. This exception is withdrawn at the end of the fiscal year and wages for the exempted group essentially frozen while everyone else receives an annual increase. (unless another exception is needed)

Mr. Hutchinson noted that outlying businesses and Mom and Pop businesses are surveyed along with the large urban businesses for purposes of establishing a pay line, but that it is still moving up too fast to suit the Legislature.

Two areas of legislative control over the system were noted. The Legislature reviews any change in the number of points assigned to a class but such changes are rare and none have been rejected by the Legislature. The Legislature also has control of the pay line and in the last two sessions have been critical of the cost involved in funding the plan consistent with the labor market.

Two kinds of pay for performance were discussed: a permanent step increase and a bonus increase. Performance pay is controlled by the agencies, but they have only 1% to 2% to work with.

In response to a question on the appeals process, Mr. Hutchinson noted that the State has a strong central Merit system which requires each agency to have a grievance procedure involving a hearing before an impartial panel which makes a recommendation to the agency head. In cases of serious grievance, the decision of the agency head can be appealed to the Personnel Commission whose decision is binding.

#### General Discussion

In response to a question on why Wisconsin is moving away from the Hay System, Mr. Blahnik pointed to problems with the Evaluation Committee. He explained that employee representatives came on the committee with the intention of scuttling the committee and they succeeded; resulting in the only failure of the committee system in Hay's history.

In response to a question on how the various state Personnel Boards are established, Mr. Hutchinson indicated that Idaho's five member board is appointed by the Governor, hires the Personnel Director, and contracts with hearing officers. There is a Department of Labor and Industrial Service that hears labor cases. Mr. Nielsen explained that Colorado's Personnel Board and Department of Personnel are constitutionally established but separate bodies. The Board is appointed by the Governor and the Executive Director of Personnel is appointed by the Governor. there is no labor board. Mr. Blahnik explained that Wisconsin's Personnel Commission is an independent three person board appointed by the Governor which hires its own staff. There is a separate labor board.

Mr. Schneider noted that several recommendations of the review team are similar to recommendations previously made by his organization - (1) reduction in the number of classes, and (2) grade rather than step pay exceptions. He indicated that his organization has also considered some of the other pay options presented at the bargaining table but found that cost is a major obstacle. Observing that implementation of a plan other than the current step plan necessitates either moving all employees to step 13 and making that the base pay or freezing everyone above some other selected base until the plan catches up, he said that the Legislature won't buy the first alternative because of cost and the union can't allow employees' wages to be frozen.

Mr. Blahnik noted that, to avoid excessive costs, Wisconsin's pay for performance program was instituted over time and aided by attrition. Separate plans were created to accommodate organized employees.

In response to a question on how Montana's pay scale compares with the others, the responses were as follows: Montana's pay compares favorably to Colorado's for entry level professionals and administrators but falls well behind the Colorado pay for experienced personnel. Colorado is the 4th highest paying state in the Union. Montana's plan is fairly competitive to Idaho's at entry level professionals but lagging for managerial positions as well as senior professionals. Montana falls well behind Wisconsin's pay for managerial levels. Lower level pay was also described as lower than Wisconsin's and while possibly acceptable under the current market, Mr. Blahnik felt that it created turnover and training expenses in some areas such as at institutions.

In response to further questioning, Mr. Blahnik indicated that Wisconsin attempts to pay according to a pay line but that not all its pay plans fit in the pay line because a number of plans are negotiated, and that in Wisconsin, merit discretionary awards are limited to non-union, professional and managerial positions. Idaho uses merit pay for all jobs and has found that it works, according to Mr. Hutchinson. The largest percentage is awarded to the lower grades, he said.

In response to questions on an appropriate classification appeal process, all representatives indicated that the Classification Bureau staff or the agency which classifies the position should be responsible for defending its decisions before an appeals board. Colorado uses a board of peers from other agencies to hear classification appeals before they go to a formal procedure, Mr. Nielsen explained.

In summary, better classification and allocation standards were described by the review team as the most critical need of Montana's system.

Chairman Bardanoue thanked the members of the evaluation team for their assistance and two members departed to catch a plane.

#### Completion and Discussion of the Employee Compensation Report by Mark Cress

After completion of Mr. Cress' report, the problem of favoritism was discussed. Some Commissioners indicated that they felt that enough controls such as a job-related performance appraisal system, upper management review of appraisal and possibly grievance proceedings would prevent misuse of performance pay.

In response to a question on how career ladders could fit into the recommendations, Mr. Cress indicated that the open range recommendation would permit continuous pay increases from entry level to senior level as long as an employee's performance is improving until the maximum is achieved. For positions with more limited responsibilities there would be more limited opportunity for improvement beyond the proficiency level and, consequently, more limited pay increases.

Mr. Cress expressed his personal preference for an open range system because it permits maximum flexibility.

In response to a question on the percentage of pay generally awarded as merit pay in other states, Mr. Cress indicated that merit increases are generally fairly small. Dennis Taylor interjected that a study of state pay programs has been conducted by the State of Nevada and will be made available to the Commission.

The general problem of underfunding of such programs by states, and the effects of base-building rate increases on the budget were discussed. It was observed that merit increases can be provided in the form of a non-base building one time bonus or in the form of a temporary base-building increase that is lost when performance decreases. It was noted that the second option is easiest to administer in an open range plan because employees who have ceased to perform in a superior way can be given smaller increases relative to other employees when the matrix is adjusted so that they drop back. In a step system it is necessary to actually take a step away to adjust the pay downward for less spectacular performance.

In response to a question on the position of labor on classification and pay, Mr. Schneider responded that while he is not opposed to discussing merit pay for unorganized employees, he is very uncomfortable about discussing pay plans for all employees because they, unlike most other topics before the Commission, are negotiable and should be decided at the bargaining table. He raised the possibility of a pay plan recommended by the Commission competing with a negotiated plan before the Legislature and expressed the view that legislative change in a negotiated pay plan is more likely than anything else to provoke a strike.

In response, it was suggested that a number of labor demands presented at the bargaining table had merit but were rejected by the State out of inertia and that a positive recommendation of the Commission would promote labor's cause. Mr. Wicks indicated that only time will tell whether the recommendations of the Commission are practical - that he too, as a member of the executive branch might be instructed to oppose a Commission recommendation.

Mr. Ferderer expressed his support for negotiated plans, particularly the blue collar plan and his opposition to any change in an "unbroken plan" - particularly a change involving merit pay.

In response to a question on why labor opposes merit pay, the labor representatives indicated that there is a natural tendency of employees to distrust management and that merit pay programs produce dissatisfaction and grievances.

Other Commissioners expressed the need to approach the question from the taxpayer's point of view consistent with the Governor's charge of producing increased effectiveness.

Further discussion involved the effect of split Commission discussions. Labor representatives indicated that many of the Commission positions are management positions - that labor has its own positions and the differences should be resolved at the bargaining table for bargainable issues. Other Commissioners assured the labor representatives that they would not support proposals that undermine collective bargaining, but Mr. Schneider pointed to the failure of the Compensation Staff Report to use negotiated agreements as the base from which to make any changes as evidence of intent to undermine collective bargaining.

In response to a question of what would be wrong with the Commission recommending changes in the pay plan favored by labor such as an institutional pay plan, Mr. Schneider indicated that some general recommendations might be acceptable but that Commission recommendations are generally more specific. He expressed the feeling that recommendations on bargainable issues compromise the labor representatives. He concluded that he would have to oppose such recommendations as appropriate.

The Commission then set the date of the next meeting as June 1 and 2. The meeting was postponed to June to permit greater staff preparation time and a two-day session scheduled to allow for more Commission deliberation time.

The meeting adjourned at 5:00 p.m.

#### Decisions and Accomplishments

The Commission approved draft legislation to implement its tentative decision to provide the Board of Personnel Appeals staff authorization to investigate unfair labor practice complaints and discuss unfounded complaints subject to appeal.

The Commission tentatively adopted the following new recommendations:

- To amend the Collective Bargaining for Public Employees Act to grant mediators authority to order fact finding
- To request that the Legislature make funds available to the

Board of Personnel Appeals to implement a mediator training program.

Staff was also requested to draft statutory language which would require that mediation be used to its fullest extent.

The next meeting date was set at June 1 and 2.

Follow-up Action

<u>Task</u>	<u>Who</u>	<u>When</u>
Redraft legislation on the time limit for unfair labor practice decisions and on the grandfather clause	Personnel Division	June meeting
Draft legislation to grant mediators the authority to order fact finding	Personnel Division	June meeting
Draft legislation which would require that mediation be used to its fullest extent	Personnel Division	June meeting
Estimate the funds required for a mediator training program	Board of Personnel Appeals	June meeting
Draft legislation to establish a grievance appeal board	Personnel Division	June meeting
Prepare a Decision Tree on Classification and Pay	Personnel Division	June meeting
Revise the Decision Tree on Legislative Involvement in Collective Bargaining	Personnel Division	june meeting

## Minutes

### PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

A. Meeting Location: 2nd Floor Conference Room  
Cogswell Building  
Helena, Montana

B. Date: June 1st and 2nd, 1982

C. Overall Objectives:

To reach tentative decisions on issues previously examined including a uniform grievance appeal process, Board of Personnel Appeals operations, and impasse resolutions, and hear staff reports, public testimony and a presentation from Hay and Associates on position classification.

D. Participants: June 1st - Morning and Afternoon Sessions

Chairman Francis Bardanouve

Rep. Cal Winslow

Jerry Driscoll

Richard Ferderer

Tom Schneider - left after noon break for one hour

Jean Fitzsimmons

Nancy Hanson

Marilyn Miller

Don Robinson

LeRoy Schraimm

Gary Wicks

Dave Stiteler - sat in for Tom Schneider after lunch for one hour

Joyce Brown, Project Director

Senators Fred Van Valkenburg and Jan Johnson Wolf were unable to attend.

E. Meeting Proceedings:

Chairman Bardanouve called the sixth meeting of the Personnel and Labor Relations Study Commission to order at 9 a.m. He opened the meeting by introducing Ms. Jean Fitzsimmons, Regional Director of Personnel for Burlington Northern, Inc., the newly appointed Commissioner replacing Ms. Percy Cline. He also asked Ms. Brown to introduce the Commission's new secretary, Ms. Lois Lofstrom.

Chairman Bardanouve then reminded the Commission members of the Governor's reception scheduled for 5:30 p.m. that evening.

#### Corrections of April minutes:

No corrections were requested. Nancy Hanson moved the minutes be approved. The motion was seconded and passed.

#### Executive Session:

The Commission went into executive session to make tentative decisions on those issues in Study Questions 1 - 7 which had not been resolved to date. These issues concerned a uniform grievance appeals procedure and operations of the Board of Personnel Appeals.

#### Consideration of Issues Involving Proposed Grievance Appeals Mechanism

Ms. Brown presented Staff Report #19, covering issues which would require decisions by the Commission before appropriate statutory language could be composed. Following the presentation, Ms. Brown pointed out that one issue not covered by the report but requiring a decision was what employees would be eligible to appeal to the proposed grievance appeals board.

Ms. Brown also asked that her continual reference to MAPA (Montana Administrative Procedures Act) throughout her report be noted, adding that she followed advice from the Department of Administration's legal staff and did not try to exempt the proposed board from MAPA. She indicated that this was probably an issue on which the Commission would have to decide.

The first issue involved the kinds of grievances that would be appealable to the proposed grievance appeals board. Three options were presented for the Commission's consideration:

- Option 1 - all grievances;
- Option 2 - only a few specified grievances (those involving termination, demotion, suspension, layoff, relocation, classification or retaliation);
- Option 3 - an intermediate array of grievances (those involving a violation of State or agency policy).

Ms. Brown recommended Option 2 and explained that she felt it represented the best balance between employee protection and management rights. She stated that Option 2 protects employees against serious abuse but does not erode management authority anymore than necessary. She noted that erosion of management authority is commonly cited as a major cause of ineffective public sector management. She also suggested that permitting minor grievances to become contested cases could create poorer employee relations than an unfavorable agency level decision.



In the following discussion, Ms. Brown explained that some states which permit all grievances to be appealed have not been swamped by insignificant appeals since most grievances are settled at a lower level. She added that other states which permit appeal of all grievances have been swamped and have consequently returned to more restrictive language.

In response to a question, Ms. Brown confirmed that restricting appeals would force employees to either settle at a lower level or simply live with the agency director's decision. She indicated, however, that these are currently the only options available to most employees, even for serious grievances.

One Commissioner asked if the wording in Option 2 would apply to disciplinary lay-offs only or to all lay-offs. Ms. Brown responded that the wording would apply to all lay-offs. She revealed that, while some states include only termination, demotion, and suspension of more than forty working hours in their appealable grievances, other states also allow lay-offs to be appealed so as to cover those situations in which managers use lay-offs to dispose of undesirable employees. She further added that the Commission would need to make a policy decision on this matter.

Concern was expressed that making all lay-offs appealable would allow even legitimate lay-offs due to lack of work or funds to be appealed. One Commissioner explained that, at present, all lay-offs are appealable but the grievable issue is who is selected to be laid off, not whether a reduction in force is necessary.

Following prolonged discussion on several of the issues presented in Staff Report #19 -- including (1) whether the evidentiary hearing should be conducted for all appealable grievances before an agency director issues an agency decision, and (2) whether employees covered by contractual grievance procedures should also have the option of utilizing the new board -- it was suggested that the Commission should resolve the issues by examining each separately.

#### ISSUE 1-APPEALABLE GRIEVANCES

In discussion over Issue 1, some Commissioners spoke in favor of option 1, which permits appeal of all grievances, and option 3, which allows appeal of violations of state or agency policy adversely affecting an employee, but the majority favored option 2, which statutorily specifies appealable grievances.

Arguments in favor of option 1, were that it provides rights not already available through the courts. Arguments in favor of option 3 were that it permits agency discretion in the form of the provisions included in agency policy. The majority argued that option 2 is

preferable because the legislature would not approve the degree of agency discretion allowed by option 3 and because it permits appeal of too many kinds of actions, not all of which are significant.

Disagreeing on what actions should be listed as appealable under option were made on the possibilities separately.

Gary Wicks moved that "A grievance involving termination, demotion or suspension" be subject to review of the newly proposed board. Rep. Calvin Winslow seconded the motion. The motion passed, with Jerry Driscoll voting 'nay'.

Tom Schneider moved to include "lay-off" in the language, since lay-offs are presently grievable. Don Robinson seconded the motion. In response to a question on whether this would permit the board to decide if lay-offs should be made, Ms. Brown responded that it would not if the Commission adopted the standard of review recommended. The motion passed, with Rep. Winslow dissenting.

Tom Schneider moved to include "involuntary transfer to another geographical location" in the language. The motion was seconded by Nancy Hanson and passed. Rep. Winslow and Gary Wicks voted 'nay'.

Gary Wicks moved that the Commission adopt the language which would permit the proposed board to hear grievances based on reallocation of a position to a class. Mr. Wicks explained that the purpose of this language is to make the board responsible for classification appeals. Don Robinson seconded the motion.

In the ensuing discussion, several Commissioners expressed concern that a shift in the responsibility for classification appeals from the Board of Personnel Appeals to the new board might result in another lengthy backlog. Supporters indicated that it would not because the number of appeals is down and those individuals hired for the new board would be as capable as those on the Board of Personnel Appeals.

When asked for the Department of Administration's position, Dennis Taylor, Personnel Division Administrator, indicated that he favors assigning responsibility for classification appeals to the new board, assuming the board would replace the Merit System Council and serve as the appeals body to hear all grievances not covered by a contract.

Bob Jensen, Administrator of the Personnel Appeals Division, was then asked for his reaction to assigning responsibility for classification appeals to the new board. Mr. Jensen responded by explaining that while approximately 65% of the division's staff time is devoted to collective bargaining issues, almost 80% of the Board of Personnel Appeals' time over the last year has been spent dealing with classification-related matters in an attempt to clean up the backlog.

He added, though, that the Board of Personnel Appeals would have little trouble handling any future classification appeals if they continue at their present reduced rate. He noted that it is important for the hearings examiners to have a good rapport with the Personnel Division, and that this has been a problem in the past.

Mr. Wicks motion to (1) include allocation and reallocation of a position to a class as a grievable item, and (2) assign responsibility for classification appeals to the newly proposed board was passed. Jerry Driscoll, Richard Ferderer, Tom Schneider and LeRoy Schramm voted 'nay'.

Mr. Wicks then moved that retaliation for participation in the State's grievance and appeal process be a grievable item. LeRoy Schramm seconded the motion, and it was passed unanimously.

#### ISSUE 2-STANDARD OF REVIEW

Tom Schneider moved that the Commission adopt Option 1 of Issue #2 (permitting the board to enter such orders as it considers appropriate without restriction) in order to allow the new board maximum flexibility in reaching its decisions. Jerry Driscoll seconded the motion.

One Commissioner objected to the option, stating that the board's decisions need to be tied to a violation of a law or policy. He said that by not setting standards, the board would be basing its decisions on nothing more than judgment, which would, in effect, be granting managerial authority to private citizens.

It was observed that option 2, which would permit the board to reverse an agency decision only if the agency failed to afford due process or violated procedure, represented the other extreme and was too restrictive.

In a substitute motion, Gary Wicks moved that the Commission adopt Option 3. The motion was seconded. Option 3 would permit the board to reverse or modify an agency decision if it finds that there is substantial (or clear and convincing) evidence that the agency decision (a) is unsupported by just cause, (b) is in violation of law, (c) is made without due process, or (d) is affected by harmful error in procedure established by State or agency policy.

Responding to a request for legal opinions on the language of Option 3, the two attorneys present agreed that the word 'substantial' should be retained in Option 3, as opposed to 'clear and convincing' which would be a more difficult standard.

As a result, Mr. Wicks clarified his motion to include the word "substantial". The motion was seconded and passed, with Mr. Driscoll and Mr. Schneider voting 'nay'.

### ISSUE 3-COMPOSITION, TERMS, QUALIFICATIONS OF THE BOARD

Preparatory to a motion, LeRoy Schramm indicated that he felt a new board was unnecessary since the Board of Personnel Appeals is well equipped to handle a grievance appeals function. He observed that eliminating the Merit System Council simply to replace it with another Board made little sense.

Mr. Schramm then moved that all the duties, responsibilities, authority, etc., the Commission creates for or transfers to the newly proposed board should instead be vested in the Board of Personnel Appeals. Mr. Schneider seconded the motion and said he favored the idea because it conforms with the current trend of cutting down, through consolidation, on the number of boards throughout State government.

In opposition, one Commissioner stated that too many conflicts would arise if the Board of Personnel Appeals were to decide issues of policy and procedural administration at the same time it decides labor relations issues, because these are separate areas of expertise requiring separate boards. Other Commissioners agreed that two boards - one to handle collective bargaining issues and one to handle appeals of administrative personnel actions unguided by collective bargaining - would permit greater competence in each area.

In a substitute motion, Mr. Wicks moved that the duties and responsibilities decided on by the Commission at this meeting be transferred to a state grievance board appointed by the Governor. Following a brief discussion, the motion was seconded and passed with a roll call vote. Commissioners Driscoll, Ferderer, Schneider and Schramm voted 'nay'.

Mr. Schneider moved that the Commission's staff be requested to prepare a minority report reflecting the views of those opposed to creating a new board. The motion was seconded and passed unanimously.

Mr. Wicks then moved that the Commission adopt proposed language for Issue 3 creating a 3 member board appointed by the Governor for staggered four-year terms and specifying the qualifications as: Montana citizenship, expertise in the field of personnel or employee relations, someone who is not a State employee and someone who has not held a position in a political party or been a candidate for an elected office within four years preceding

appointment. The language also prohibited anymore than two members from the same political party. The motion was seconded by Ms. Hanson.

The ensuing discussion focused on the name of the new board and on the length-of-term of the board's members, but no additional motions were made.

Mr. Wicks' motion was then passed, with Mr. Driscoll and Ms. Hanson voting 'nay'.

#### ISSUE 4-RULE MAKING AUTHORITY

Mr. Schneider moved that the proposed language for Issue 4 giving the board procedural rule making authority and the powers and duties of the Merit System Council be adopted by the Commission. Mr. Wicks seconded the motion, which was then passed unanimously.

#### ISSUE 5-FUNDING/STAFF

Mr. Schneider then moved that the proposed language for Issue 5 attaching the board to the Department of Administration for administrative purposes only be adopted after first amending it by substituting 'Department of Labor' for 'Department of Administration'. Noting that the Department of Administration is already the general rule-making authority for State personnel issues, Mr. Schneider suggested that conflict-of-interest questions may arise if the grievance appeals process is also based in the Department of Administration.

During the following discussion Ms. Brown pointed out that provisions of the statute describing the functions an agency assumes for an "attached to" board (2-15-121 MCA) assume staff for the board is hired by the agency unless otherwise provided by statute. Based on this information, Mr. Schneider replaced his previous motion with a motion to attach the new board to the Department of Administration, but with language specifying that the board's staff will be hired by the board itself, rather than by the Department of Administration. This motion was seconded and passed, with Mr. Wicks voting 'nay'.

In response to comments that permitting the staff of the Board of Personnel Appeals to be hired by the Department of Labor and Industry, was also questionable, Mr. Schramm moved that the Board of Personnel Appeals also be given the authority to hire its own staff, while retaining its attachment to the Department of Labor and Industry for administrative purposes only. The motion was seconded by Mr. Schneider and passed, with Mr. Wicks dissenting.

At 11:50 a.m., the Chair called for a lunch recess and asked that the Commissioners be prepared to resume at 1:15 p.m.

Chairman Bardanouve called the afternoon session to order at 1:25 p.m.

#### ISSUES 6 AND 7-HEARINGS OFFICERS AND HEARINGS PROCEDURE

Discussion on the hearings procedure began with an expression of concern that it provides unorganized employees with a free process, while organized employees, who are forced to use their contractual grievance procedure, must pay for an appeal. It was suggested that employees utilizing the new board should be assessed a reasonable fee, which also may act as a deterrent to frivolous grievances. Some Commissioners felt this would help deter frivolous cases; others observed that a fee was not needed to make it consistent with the negotiated arbitration process since unions, not individual employees, pay for the latter.

Mr. Robinson then moved that the proposed language for Issue 7 establishing the grievance procedure be adopted as amended to allow a grievance appeal after a decision by the agency director. Mr. Wicks seconded the motion, which was passed unanimously.

#### ISSUE 9 (THERE WAS NO ISSUE 8)-POSSIBLE EXCLUSION OF THOSE EMPLOYEES HAVING AN APPLICABLE NEGOTIATED GRIEVANCE PROCESS

With respect to Issue 9, Mr. Wicks moved that organized employees wanting to pursue a grievance should be allowed to choose either their contractual grievance procedure or the proposed board. Mr. Ferderer seconded the motion.

The following discussion centered on what issues organized employees would be allowed to take to the new board.

As a result of this discussion, Mr. Wicks agreed to amend his motion to include the language proposed by Mr. Robinson, which read: "If any grievance for which an appeal may be taken under this act is covered by a collective bargaining agreement, then the grievance should be resolved exclusively under the procedures set forth in the collective bargaining agreement." The motion was seconded and passed unanimously.

Ms. Brown indicated that one other issue still requiring the Commission's consideration was what level or group(s) of employees should be excluded from the proposed grievance procedure. She commented that many State statutes exclude top level managers, the University System, legislative employees, and, in some cases, judicial employees.

Discussion followed, but no agreement or decision was reached.

Returning to a previous topic of discussion, Mr. Schramm moved to include the following language in Issues 7 and 8: "The non-prevailing party in this grievance procedure shall be assessed the costs of the hearing. The hearings examiner shall determine which party is the non-prevailing party." Mr. Schneider seconded the motion for the sake of bringing it to a vote. The motion failed, with Mr. Schramm voting 'aye'.

Ms. Brown indicated there were no further issues in Staff Report No. 19 requiring the Commission's attention.

CONSIDERATION OF UNRESOLVED QUESTIONS INVOLVING THE BOARD OF PERSONNEL APPEALS IN DECISION CHART 1 (QUESTIONS 1, 3 - 7)

Ms. Brown indicated that Questions 1 & 3 had been resolved. With regard to Study Question 4, involving what the Board of Personnel Appeals can do to expedite the handling of unfair labor practice cases, Ms. Brown indicated that the draft legislation (LC0012/01) to clarify the time limit for a final decision of the Board had been amended as requested to require a decision within 5 months after the hearing if there are no briefs.

Mr. Schneider moved that the Commission adopt the amended language as proposed. The motion was seconded by Mr. Wicks and passed unanimously.

Ms. Brown suggested that any further consideration of Question 5, regarding desired changes in the classification appeals process, be saved until the next meeting, during which the Commission will consider broader classification and pay issues.

Ms. Brown then directed the Commission's attention to Study Question 6B, concerning the Board of Personnel Appeals' handling of contract disputes (an issue commonly referred to as the Collyer Doctrine). She noted Francis Raucci's correspondence on the matter and requested that Mr. Bob Jensen, Administrator of the Board of Personnel Appeals, explain recent developments. Mr. Jensen stated that a case scheduled for hearing on July 9 will determine whether the Board adopts the Collyer Doctrine. The Commission agreed that further consideration of the issue should be deferred until after the hearing.



The discussion then moved on to Study Question 6-C concerning the Board of Personnel Appeals' handling of unfair labor practices involving nurses. The Commission's attention was directed to a recent letter from the Montana Nurses' Association (MNA) in which the MNA agreed to modifications of the Collective Bargaining Act for Nurses which would; (1) permit the employer to file an unfair labor practice against the labor organization, and (2) give the Board of Personnel Appeals jurisdiction over all unfair labor practice charges.

Mr. Schramm moved that the Commission staff prepare legislation for the purpose of implementing these two provisions. The motion was seconded and passed, with Mr. Schneider dissenting.

The next topic discussed was draft legislation to implement Commission recommendations on Study Question 6-D concerning the Board of Personnel Appeals' handling of "frivolous" unfair labor practice cases.

Mr. Robinson moved to amend the draft legislation (LC0013/01) to clarify the Commission's intent that the Administrator have authority to dismiss a case pending appeal and that the appeal would result in a review rather than a hearing as follows: (a) insert "or the administrator" after "the board" in line 23, page 1, (b) replace "hearing" with "review of the decision to dismiss the complaint" in line 3, page 2 and (c) replace "hearing" with "review" at the end of line 3 and in line 6, page 2. The motion was seconded by Mr. Schramm and passed unanimously.

Discussion on Study Question 6-E was temporarily postponed until Mr. Robinson could be present.

In the meantime, one of the Commissioners asked for further discussion on whether some kind of fee should be charged to parties filing grievances before the newly proposed grievance appeals board. The concern was focused on who would bear the costs of the grievance procedure. Ms. Brown stated that the assumption made in her paper was that these costs would be handled through the normal route of a direct appropriation. She indicated that a charge to user agencies had been considered but rejected because of administrative problems.

The discussion continued on to separate questions addressed at the end of the January 29, 1982 decision chart.

With regard to the second of these questions -- "Should BPA staff specialize so that staff members involved in adversary proceedings are not involved in mediations?" -- Mr. Schramm moved that the Commission recommend legislation allowing each party one strike of an assigned hearings officer and that the language be similar to that in the grievance procedure. Mr. Schneider seconded the motion.

Mr. Schramm subsequently amended his motion to incorporate the idea of allowing each party to strike one of three names provided by the Board of Personnel Appeals, with the remaining name becoming the hearings officer. Mr. Schneider again seconded the motion and it passed unanimously.

When questioned on how such a change should be implemented, Mr. Jensen commented that an administrative rule should be adequate. He agreed to propose the issue as a rule to the BPA and inform the Commission of the results at the Commission's July meeting.

Ms. Brown questioned whether the one-strike provision would also apply to mediations. One Commissioner suggested that since the process of selecting mediators does not appear to be a problem, it should be left intact for now.

#### CONSIDERATION OF UNRESOLVED ISSUES INVOLVING IMPASSE RESOLUTION IN DECISION CHART 2 (QUESTIONS 2 AND 11)

The Commission was then referred to Study Questions 2 and 11 involving impasse resolution and to a draft statute (LC0032/01) which would implement Commission recommendations to give mediators (1) the authority to initiate fact finding, and (2) require use of mediation before concerted action could be taken. Following brief discussion, Mr. Wicks moved that the Commission adopt the language contained in LC0032/01. The motion was seconded by Rep. Calvin Winslow.

Mr. Schneider then moved that each paragraph of LC0032/01 be considered separately. Mr. Wicks seconded the motion and it passed unanimously.

Mr. Schneider moved that the language through line 21, page 1 be accepted. Mr. Ferderer seconded the motion, but it was subsequently withdrawn to allow more discussion.

Mr. Robinson then moved to generally clarify the language to require mediation before concerted action as follows: (1) insert "one of" before "the parties" in line 20; (2) insert "request appointment of a mediator and" after "the parties shall" beginning in line 20; (3) insert "as provided for under this act" after "use mediation" in line 21. In subsequent discussion, it was observed that if parties are required to use mediation before they can take concerted action and to negotiate for a reasonable period of time before that (a process over which one party has little control), one party could stall the process. In response to a recommendation by Tom Schneider, Mr. Robinson amended his motion to (4) replace "after a reasonable period of" with "during" in lines 15 and 16.

One Commissioner emphasized that even with the proposed changes, the language would still be confusing with regard to when parties can strike and when they can request mediation. Consequently, the Chair suggested that the staff revise the language and present it again at the July meeting.

Before continuing, however, a question arose concerning the necessity of lines 22 and 23 on page 1, implementing the Commission's recommendation to authorize the mediator to petition the Board for fact finding. It was suggested that the issue should be resolved before the staff expends any more effort on this section. Mr. Driscoll moved that lines 22 and 23 be stricken from the language. The motion was seconded.

In the subsequent discussion, one Commissioner requested that it be noted that this motion is a step backward, since the Commission had previously agreed to include this provision in the language.

The motion was passed, with Commissioners Wicks, Hanson and Miller voting 'nay'.

The Chair was reminded that Mr. Robinson's motion was still pending. Mr. Schramm then made a substitute motion to send the proposed language back to the Commission staff for revision. Mr. Schneider seconded the motion, and a roll call vote was taken. The motion failed, with Commissioners Winslow, Driscoll, Hanson, Robinson and Wicks voting 'nay' and Chairman Bardanouve abstaining.

The Chair then called for a vote on Mr. Robinson's motion. The motion passed unanimously.

At approximately 4 p.m., the Chair introduced Mr. Steven Clark of Hay & Associates, to make a presentation on the Hay Guidechart Classification Program being considered by the Commission as a possible option for Montana.

Just prior to the presentation, the Commission moved, seconded and passed a motion to defer action on the grandfather clause until after the Supreme Court decides the State of Montana, ex rel. Board of Personnel Appeals and Billings Firefighters Local #521 vs. City of Billings case.

Following Mr. Clark's presentation, the Commission meeting was adjourned at approximately 5 p.m. and scheduled to reconvene at 8 a.m. the next day, Wednesday, June 2, 1982.

June 2, 1982

MORNING SESSION

F. Overall Objectives:

To reach tentative decisions on Study Questions 8, 9 and 10 concerning legislative involvement in collective bargaining; to hear staff reports on increased productivity through improved recruitment, selection, and training programs, plus reports on employment preferences, performance appraisal and merit pay, and collective bargaining and merit pay; and to hear a brief presentation by the University System on its Masters in Public Administration program.

G. Participants: June 2nd - Morning and Afternoon Sessions

Chairman Bardanouve  
Senator Van Valkenburg  
Rep. Cal Winslow  
Jerry Driscoll - morning session only  
Richard Ferderer - afternoon session only  
Tom Schneider  
Marilyn Miller  
Don Robinson  
LeRoy Schramm  
Gary Wicks

Absent were: Sen. Jan Johnson Wolf  
Jean Fitzsimmons  
Nancy Hanson

Mr. Mike Walker, Labor representative of the Great Falls firefighters, sat in for Mr. Ferderer during the morning session and for Mr. Driscoll during the afternoon session.

H. Meeting Proceedings:

Chairman Bardanouve called the session to order at 8 a.m.

CONSIDERATION OF QUESTIONS ON LEGISLATIVE INVOLVEMENT IN COLLECTIVE BARGAINING IN DECISION CHART 3 (QUESTIONS 8, 9 AND 10)

Ms. Brown referred the Commission to Study Question 8, concerning the respective roles of the executive and legislative branches in collective bargaining and how much control each branch should exercise. The options presented were as follows:

- Option 1 - Adopt the Wisconsin model by establishing a legislative study committee with the authority to (1) ratify negotiated agreements prior to submission to the full legislature, and (2) require pre-acceptance or pre-offer consultation by executive branch negotiators.
- Option 2 - Adopt the Minnesota model by establishing a legislative standing committee with the authority to (1) ratify agreements prior to submission to the full legislature, and (2) require executive branch negotiators to keep the committee informed of collective bargaining progress.
- Option 3 - Adopt the Connecticut model by statutorily requiring executive branch negotiators to maintain a close liaison with legislators without establishing another layer of legislative review.
- Option 4 - Adopt a Department of Administration proposal requiring several measures to insure close communication between the negotiators and legislative leadership. This option would require: (1) Department of Administration provision of early and periodic briefing on the conduct and progress of collective bargaining to the legislative leadership and/or an appropriate committee; (2) early introduction of the State pay bill; (3) joint establishment by the Office of the Legislative Fiscal Analyst, the Office of Budget and Program Planning, and the Department of Administration of a reliable system to calculate the costs of negotiated settlements in a manner that can be independently verified by all parties.
- Option 5 - Adopt a Multi-State model involving informal communication between the negotiators and legislative leaders.

Chairman Bardanoue introduced Mr. Morris Brusett, Director of the Department of Administration, and asked for his comments. Referencing his letter to the Commission in support of Option 4, which was added at his request, he indicated that it represented planned improvements in the process which he hoped would eliminate past problems.

Mr. Brusett was asked whether he would commit to submitting separate pay legislation which contains only negotiated items. It was suggested that by allowing additional items to ride on the bill containing the negotiated agreement, there is added confusion over what was negotiated and what was added by the Department of Administration. Mr. Brusett indicated he would have no problem with submitting a separate bill covering just the negotiated agreement.

Following further discussion, Mr. Schneider moved that the Commission adopt Option 4. The motion was seconded by Ms. Miller.

One Commissioner recommended that draft legislation to implement option 1 be submitted to the legislature without recommendation for consideration. This Commissioner explained that if the results of the Department of Administration efforts are positive in the 1983 Legislative session, the bill containing the alternate option can be tabled indefinitely. However, if the Department of Administration's actions are poorly accepted, then there will be a bill ready and waiting to address the issue.

Following prolonged discussion on the need to increase communication between the legislative and executive branches with regard to collective bargaining, Mr. Robinson moved to amend Mr. Schneider's motion by including a request to the Commission staff to prepare Option 1 (the Wisconsin model) in bill form for presentation to the 1985 Legislature. Sen. Van Valkenburg seconded the amended motion, and it passed, with Mr. Schneider voting 'nay'.

The Chair then called for a vote on Mr. Schneider's original motion, which passed unanimously.

Ms. Brown next reviewed Study Question 9, concerning whether the legislature's control should be confined to economic issues only or extended to include non-economic issues as well. She presented the following options for the Commission to consider:

- Option 1 - Establish a standing committee to review both economic and non-economic issues.
- Option 2 - Confine legislative review to economic issues and either
  - (a) retain the current narrow definition of economic issues, or
  - (b) use a broader definition of the term "economic".

Ms. Brown added that certain legislators had indicated a preference for a broader definition of the term "economic".

During the following discussion, it was pointed out that under the Wisconsin model, provisions of negotiated agreements requiring legislative action are all submitted to the legislature, and therefore, by adopting the Wisconsin model, the Commission would be requiring all negotiations -- economic and non-economic -- to be completed prior to the session.

It was generally agreed that a decision on Study Question 9 required a decision on Study Question 10 as well. Question 10 is whether there should be two sets of negotiations -- one for economic items and one for non-economic items -- or just one combined set of negotiations. Ms. Brown presented the following options for Study Question 10:

- Option 1 - Negotiate all items prior to submission of the executive budget.
- Option 2 - Continue to negotiate only economic items prior to submission of the executive budget and either:
  - (a) retain the current narrow definition of economic items, or
  - (b) use a broader definition of the term "economic".

Ms. Brown added that Option 2-b (like option 1) would probably require supplemental as well as master agreements to be negotiated before submission of the executive budget.

She went on to pose an additional question outlined in the decision chart for the Commission to consider if it decided to recommend moving to a single pre-budget negotiation session; that is, what measures, if any, should be taken to streamline the process so that negotiations can be completed in time for the legislative session? The following options for resolution of this question were presented to the Commission:

- Option 1 - Alter the budgetary process so that wage and insurance parameters are provided earlier.
- Option 2 - Consistent with Oregon's approach, seek union agreement to reduce the number of bargaining units.
- Option 3 - Increase the number of State negotiators.
- Option 4 - Separate the appropriations and collective bargaining processes by requiring that agreements (whenever reached) be administered regardless of appropriated amounts.



In the ensuing discussion, it was pointed out that a move toward a unified system of negotiation would require support from labor as well as from management. A Commissioner representing labor explained that while the unions are in favor of negotiating economic and non-economic items at the same time, the real problem is that not everyone covered by the same pay plan is also covered by the same contract.

Noting that he wasn't sure what should be done with Study Question 9, Mr. Schramm then moved that the Commission adopt Option 1 of Study Question 10. Mr. Schneider seconded the motion.

When asked for an opinion on unified negotiations, Rod Sundsted, Labor Relations Bureau Chief, noted that while he agreed with the idea in principle, he wasn't sure how his current staff would be able to handle the 75 contracts requiring negotiation. He explained that to conduct meaningful negotiations, he and his staff would need the necessary budgetary figures by April.

It was felt that Mr. Sundsted's concerns were valid, but that the Commission should go on record as having recommended at least a move toward unified negotiations.

Mr. Schramm's motion passed unanimously.

#### STAFF REPORTS

Staff reports were preceded by introductory remarks by Dennis Taylor, Administrator of the Personnel Division.

Mr. Taylor stated that more attention needs to be given to the recruitment, selection, training and management of employees. He pointed out that while the private sector often assigns top priority to its employee relations activities, state government, in comparison, invests very little in this area. Mr. Taylor concluded that employee relations issues may, in the long run, be the most important issues the Commission will consider.

Staff Report #14, "Increasing Productivity Through Employee Training", was then presented by Mark Cress, Employee Relations Bureau Chief. Mr. Cress' presentation highlighted four major areas:

- (1) the desirability and need for training, as drawn not only from a review of contemporary literature, but also from a recent survey of State managers;
- (2) a review of the State's current training efforts, including discussions on agency and centralized training functions and an analysis of the most recent Central Training Section budget;

- (3) an analysis of what's needed to conduct employee training properly, including a definition of the training process and discussions on determining training needs, planning and implementing the content and procedure of training, and evaluating the outcomes of training; and
- (4) an outline for training in State government in which eight goals for making optimal use of training dollars were proposed.

Mr. Cress stated that the final recommendation calls for a Central Training Section with three professional staff members: one Training Coordinator, one Training Consultant, and one actual Trainer, or Provider. He explained that only the Trainer's position would be fee-generating, and so, could at least be partially funded by training fees. He emphasized that training fees should be expected to cover the actual costs of training, but not the administration or coordination expenses. The proposed budget for funding the recommendation through fiscal year 1983 is \$119,000.

The following discussion focused primarily on reinforcing the importance of two of the major goals cited by the report -- identification of training needs within each agency and coordination of efforts to satisfy these needs. It was agreed that if the Central Training Section is to exist, it should have both the ability and the authority to achieve these two goals.

In addition, a labor representative stressed that the Central Training Section should place more emphasis on developing employee career ladders. He commented that employees should have an opportunity not only to improve their present skills, but also to learn new ones in order to advance their careers.

#### PRESENTATION ON THE MASTERS OF PUBLIC ADMINISTRATION PROGRAM

After a short break, Dr. Lauren McKinsey and Dr. Jim Lopach presented a report on the University System's Master of Public Administration program.

Dr. Lopach, Chairman of the Political Science Department at the University of Montana, began the presentation by outlining the origination and purpose of the MPA program, along with the State's tuition assistance program.

Dr. McKinsey, a member of the Political Science Department at Montana State University, went on to discuss some of the problems faced by the MPA program since its inception in 1976, as well as what is

being done to resolve those problems. He cited a general lack of continuity and direction in the courses offered as the major contributor to the lower-than-expected attendance and resulting failure of the program to meet costs. As a solution to these and other problems, Dr. McKinsey proposed establishing in Helena a Resident Director, whose job would be to cut as much as possible such extraneous costs as advertising the program, locating suitable classroom facilities, etc.

Dr. McKinsey concluded the presentation by emphasizing that the MPA is looking to the Commission not for financial support, but for recognition as a viable State training resource.

In response to questions, Dr. McKinsey pointed out that the next two to three years should see a move toward offering a Master of Business Administration degree as well as the MPA degree. He added that a few of the courses currently being offered are acceptable for either an MBA or MPA degree. In response to questions on how the program can be tailored to the staff's needs, he added that while most of the curricula for the MPA degree is established by nationwide precedence, some of the elective courses offered could be determined by suggestions from various State agencies.

Staff Report #15, "Increasing Productivity Through Improved Recruitment and Selection Techniques", was presented by Jim Nys, Acting EEO Coordinator and Meg Arnold, Personnel Specialist.

Jim Nys opened the presentation by briefly defining the terms "recruitment" and "selection" and pointing out that the scope of the report covers just the executive branch of State government, excluding the University System.

The report centered on five major areas:

- (1) an examination of professional standards for recruitment and selection, including brief discussions of "job-relatedness", "validity", "unbiasedness", "objectivity" and "reliability", and "documentation";
- (2) an analysis of the State's past and current recruitment and selection programs, plus a discussion on Job Service operations and concerns;
- (3) a review of agencies' perceptions of current recruitment and selection practices, as determined from responses to a questionnaire survey;

- (4) a survey of personnel systems used in other states; and
- (5) a review of what current personnel literature recommends for successful recruitment and selection practices and programs.

Concluding that the State's recruitment and selection record is spotty at best, several recommendations were presented for upgrading the recruitment and selection services of the Personnel Division as well as Job Service and placing responsibility for selection decisions with those individuals who have sufficient job information:

Recommendation 1: Establish a recruitment and selection training program and require attendance by State hiring officials at least every three years.

Recommendation 2: Establish within the Personnel Division a recruitment and selection assistance program with responsibility for:

- (a) developing a training program as in Recommendation 1;
- (b) providing technical assistance to State agencies;
- (c) analyzing/recommending use of certain recruitment and selection techniques; and
- (d) maintaining a recruitment and selection resource library.

Recommendation 3: Require all State agencies to recruit through Job Service for all job openings, but permit recruitment elsewhere as well to meet special recruitment needs.

Recommendation 4: Require Job Service to post notices of all State job openings.

Recommendation 5: Establish an agreement between the State and Job Service under which Job Service will screen applicants to varying degrees, depending on the job's qualifications.

Recommendation 6: Establish a joint Employment Security Division/Personnel Division training team to provide training to Job Service interviewers.

Recommendation 7: Adopt one of the following options:

- Option 1 - Provide sufficient resources to update and validate Merit exams being administered by the Job Service.

Option 2 - Provide sufficient resources to update Merit exams to assure job-relatedness, but without technical validation. (While this option is less costly than option 1 and provides some assurance that the tests are accomplishing their purpose, it provides less assurance than option 1.)

Option 3 - Discontinue use of all but currently-validated written tests.

At 11:45 a.m., the Chair postponed questions on the report and called for a lunch break.

#### AFTERNOON SESSION

The Commission reconvened at 1:25 p.m. Before receiving questions, Mr. Nys asked to be allowed to present Staff Report #16, "Preference Procedures and Issues", as a supplement to Staff Report #15.

Mr. Nys' presentation was based primarily on reviewing the various groups of persons eligible for employment preference and the statutory or administrative action which establishes the particular preference for each group. His discussion also touched briefly upon various other practices and procedures which more or less amount to employment preference, such as Merit System practices favoring in-State applicants and collective bargaining agreements favoring those with greater seniority.

Mr. Nys recommended that all preferences accorded by law or administrative rule should be of a tie-breaking nature only. He stated that this practice would allow State agencies to seek out the most highly-qualified individuals available while continuing to assist people with special employment problems find jobs.

In the following discussion, it was noted that granting absolute preference (as opposed to having the decision of preference serve as a tie-breaker) to veterans could have a very harmful effect on female employment, since veterans are traditionally male. Mr. Nys agreed with this observation, adding that the absolute preference practices in Massachusetts were challenged in the United States Supreme Court, but upheld.

Mr. Nys explained that the whole preference issue came to the foreground as a result of the 1982 Crabtree vs. Montana State Library case, wherein it was decided that the State's 1921 law (Section 10-2-201 et seq, MCA) does, in fact, grant absolute preference.

It was pointed out that numerous undefined terms within this law were obstacles to its proper enforcement.

Mr. Taylor then noted that the desire of the Personnel Division is for the Commission to consider proposing a legislative clarification of the State's preference laws and how they should apply.

The discussion next turned to whether or not hiring out-of-state people for higher-level positions has an adverse impact on employee morale. Occurrences at the prison, the Highway Patrol, the City of Great Falls were cited as three instances in which new hirings from outside the particular unit had caused a large number of complaints.

Mr. Nys responded by suggesting that dissatisfaction resulted not from hiring out-of-state, but rather, from not promoting someone within the unit.

A question was raised concerning what attempts have been made to insure that agencies advertise their job openings with Job Service. Gary Curtis, Administrator of the Job Service Division, responded that there exist executive orders by both Governors Judge and Schwinden which require all job openings to be listed with Job Service, but that not all agencies comply with these orders.

#### RESPONSE TO STAFF REPORT #15 BY GARY CURTIS, ADMINISTRATOR OF JOB SERVICE

Mr. Curtis then presented his prepared response to Staff Report #15. He emphasized two points: first, that Job Service is a State agency, even though it is funded with federal monies; and second, that as a State agency, Job Service is willing to cooperate to the fullest extent with agencies and local communities to accommodate their needs. He observed, however, that Job Service cannot be all things to everyone and that, as indicated, some professionals and minorities avoid Job Service despite efforts to improve relationship with minority communities. In conclusion, he stressed his belief that having all agencies list their jobs with Job Service would be extremely beneficial, to the public as well as to Job Service, because such a broad listing would attract professionals, minorities, and the elderly as well as the blue collar workers.

#### PUBLIC TESTIMONY

Jon Meredith, Division Administrator with the Department of Revenue, commented on the success of a selection techniques workshop conducted

by the Central Training Section of the Personnel Division several months ago. His remarks indicated full support for the continuation of training as offered by the Personnel Division.

Dan Bucks, Deputy Director of Operations in the Department of Revenue, also provided testimony supporting the Central Training Section, in general, and the selection techniques workshop, specifically. Noting that the training had been instituted as part of the agency's affirmative action plan, he observed that the results had not been poorer selections (as commonly feared from affirmative action), but a belief on the part of managers that they were making better, more confident selection decisions.

Bob Robinson, Administrator of the Energy Division in Department of Natural Resources & Conservation, provided testimony similar to that of Mr. Meredith and Mr. Bucks. He reminded the Commission that the Energy Division was at one time noted for its less-than-commendable recruitment and selection practices. He stated, however, that workshops in these areas conducted by the Personnel Division were responsible for the complete turnaround and success of the Energy Division's current recruitment and selection procedures.

Bob LeMieux, a member of the Governor's Advisory Council for Employment of the Handicapped, made the point that disabled civilians should receive the same preferential treatment as do veterans. He concluded by asking the Commission to support the Preference Act for Disabled Civilians.

Responding to a question concerning his opinion on whether preference should be absolute or of a tie-breaking nature, Mr. LeMieux commented that preference considerations should be applied only in a situation of equally-qualified candidates.

Mr. LeMieux was also asked if he could assist the Commission by recommending a suitable definition of the term "handicapped". He commented that the definition found in the Vocational Rehabilitation Act of 1973 should be adequate.

Norm Grosfield, a Helena attorney and current member of the Merit System Council, provided the next testimony, focusing on the Merit System Council's reaction to the newly-proposed grievance appeals board. Mr. Grosfield, who had been asked to present Merit System Council views on the grievance appeal proposals, first pointed out that the Merit System Council does not necessarily object to being replaced, but he asked that current Merit System employees be allowed to continue receiving their current coverage. He went on to explain that while he and the other Council members do not agree on the make-up of the new board, they do agree that the new members should be appointed by the Governor.



Mr. Grosfield commented that he personally would not be opposed to having full-time board members if enough work exists, although a lay board is preferred by another Merit System Council member. He stated that in any event the board should be permitted to hire its own hearings officers, who should, in turn, be granted broad authority, with decisions appealable to the full board. He stated, though, that timeliness is the largest problem Board of Personnel Appeals hearings officers have now, and he asked the Commission to consider this issue when constructing the legislation with which to implement the new board.

Mr. Grosfield's concluding remark was that the board should not be a policy-making body, like the Council, but rather, the Personnel Division should issue personnel policies for Merit agencies as they do for other agencies.

Barbara Kapinos, President of the Montana Public Employees Association, was the next person to testify. Her remarks, involving the classification and pay issue, centered on expressing MPEA's opposition to the merit pay proposal offered in Staff Report #11. She noted two major reasons for opposing merit pay: first, there are currently no objective methods for determining who is and is not eligible to receive a merit pay increase, and second, the State's current budgeting process would not allow everyone who deserves a merit increase to receive one. Ms. Kapinos further noted that an attempt to adopt a merit pay system among Montana State University employees failed miserably because of supervisors' varying ideas of meritorious performance and employees' misplaced efforts to correct the resulting inequities. At this point, Ms. Kapinos submitted numerous petitions and comments from MPEA members opposing the merit pay proposal.

Laurie Lamson, representing the Interdepartmental Coordinating Committee for Women, an advisory council to Governor Schwinden, offered the following responses and recommendations on Study Questions 16 through 21, covering recruitment, selection, and the development and management of State employees:

#### Question 16 - Recommendations Concerning Recruitment

- (1) State managers should be trained in personnel management;
- (2) State agencies should actively recruit and use on-the-job training for "hard-to-fill" positions;
- (3) Work experience, as well as education, should be considered in recruiting;

- (4) DOA or Job Service should maintain a list of contact groups for entry level positions;
- (5) All State job openings should be listed in one place.

Question 17 - Recommendations Concerning Selection

- (1) Allow agencies the flexibility to hire the most capable people, but require them to follow minimum standards set by DOA;
- (2) Require all State personnel officers to attend formal selection training annually;
- (3) Merit tests, if given, should be reviewed and updated annually.

Question 18 - Recommendations Concerning State Manager Training

- (1) Each agency should develop an employee training program;
- (2) Each agency's budget should include funds marked specifically for training;
- (3) All employees should have equal access to training;
- (4) Support DOA's proposal for a Centralized Training Program, including its technical assistance, curriculum development, coordination of training between agencies, and MPA program.

Question 19 - Recommendations Concerning Performance Appraisal

- (1) All State agencies should utilize an annual written performance appraisal system;
- (2) The system utilized should be monitored by the agency's personnel officer.

Question 20 - Recommendations Concerning Performance Incentives

- (1) Employee merit should be recognized through various non-financial incentives, including career ladders, letters of commendation, additional training opportunities, etc.
- (2) Any merit pay systems developed should allow all meritorious employees to receive recognition; monetary award should be a lump sum and not tied into the grade/step framework.

Question 21 - Recommendations Concerning Personnel Policies

- (1) Review all existing policies and update or delete them when necessary;

- (2) Encourage agencies to adopt specific policies to meet their individual needs;
- (3) DOA should support job sharing, flex time, training and leave policies;
- (4) DOA should implement minimum guidelines for agency grievance procedures;
- (5) All State employees should be covered by specific grievance procedures for sexual harassment on the job.

Receiving no additional testimony, the Commission prepared to move on to Staff Report #18. Before the presentation, however, Rod Sundsted, Labor Relations Bureau Chief, asked for an opportunity to comment on the proposed grievance appeals board.

Mr. Sundsted expressed two major concerns with the board as it is being proposed: first, that it is free to the employee, and second, that timeliness will become a problem because the board appears to extend the appeals process. He asked that the Commission consider these issues while further developing the board.

Staff Report #18, "Performance Appraisal and Its Relationship to Merit Pay", was then presented by Mark Cress, Employee Relations Bureau Chief.

Mr. Cress' presentation focused on five major areas:

- (1) The principals of performance appraisal, including a brief discussion on traditional appraisal systems and their success in being defended in court;
- (2) Trends in various aspects of performance appraisal systems;
- (3) Montana's current performance appraisal system;
- (4) The relationship of performance appraisal to merit pay and other incentives; and
- (5) Possible approaches to relating merit pay to performance appraisal.

In addition, five recommendations were presented for the Commission's consideration:

- (1) All state agencies should be required to adopt a job related performance appraisal system which complies with the minimum standards in the State's performance appraisal policy.
- (2) Agency management should be committed to the successful implementation of performance appraisal as a motivational tool and every supervisor should be adequately trained in the purposes and procedures of the agency's appraisal system.

- (3) No agency should adopt a merit pay program for any of its employees until there is a job-related performance appraisal system completely implemented. The system should be fully operational as a communication and development tool before a merit pay program is undertaken.
- (4) Any proposal to use performance appraisal as a support for a merit pay program should be very carefully developed with full consideration of the competing requirements and possible approaches outlined in this paper.
- (5) Every effort should be taken to maintain performance appraisal as a participatory communications tool and not simply as a ranking device to directly support or decide important personnel decisions. If merit pay systems are established, they should include an intermediate evaluation process like that recommended by the U.S. Office of Personnel Management.

In the following discussion, as in the presentation, Mr. Cress emphasized that linking merit pay directly to performance appraisal often negates other major benefits of the appraisal process. It destroys open communications. He noted that while organizations and the literature generally support merit pay, they are also cautious not to link it directly to performance appraisal systems.

#### Addendum to Staff Report #11 on Employee Compensation

Rod Sundsted, Labor Relations Bureau Chief was then introduced by Ms. Brown. She explained that the addendum had been prepared at the request of Commissioner Schneider.

Mr. Sundsted briefly reviewed the historical effect of collective bargaining on the present pay plan. He indicated that with few exceptions, collective bargaining has more or less established the present pay matrix.

Mr. Sundsted also discussed the State's obligation to bargain provisions of the pay plan. He concluded that the State has a statutory duty but not a constitutional obligation to bargain over changes to the pay plan which affect members of collective bargaining units. He summarized this issue by stating that any recommendations to establish a merit pay plan (for which he provided two groups of options) would: (1) have to cover only non-unit personnel, (2) be subject to bargaining, or (3) be accompanied by a statutory change in the State's duty to bargain.

No discussion followed the report, so the Commission moved on to planning for subsequent meetings. The Commission decided to hold a two-day meeting on July 22 - 23 to avoid an August meeting.

A motion to adjourn the meeting was moved, seconded, and passed. The meeting was adjourned at 4:30 p.m.

I. DECISIONS AND ACCOMPLISHMENTS:

A. Refinements/Additional Actions on Previous Decisions

1. Draft legislation (LC0012/01) was approved amending the Collective Bargaining for Public Employees statute to clarify the starting date of the five-month time limit for a final Board of Personnel Appeals decision on an unfair labor practice case as: "five months after final briefs are submitted to the hearings officer or, if no briefs are submitted, then within five months after the hearing".
2. Draft legislation (LC0013/01) as corrected was approved amending the Collective Bargaining for Public Employees statute to permit the Board of Personnel Appeals staff to investigate an unfair labor practice complaint and dismiss the charge if it is found unmeritorious subject to review by the Board provided a request for Board review is made by the charging party within ten days of the staff notice of intent to dismiss.
3. Draft legislation (LC0032/01) as corrected was approved amending the Collective Bargaining for Public Employees Act to require use of mediation prior to taking any form of concerted action and to require that one of the parties request appointment of a mediator when a dispute concerning the collective bargaining agreement exists during negotiation (rather than "after a reasonable period of" negotiation) or upon expiration of an existing collective bargaining agreement.

Explanation: The latter provision was added to facilitate use of mediation since its use is required before concerted action can be taken.

4. The decision to give mediators the authority to initiate fact-finding was reversed.
5. The Commission determined that the proposed uniform grievance appeal process should involve a new grievance appeals board to replace the Merit System Council and assume some functions of the Board of Personnel Appeals. The following features of the process were tentatively recommended for incorporation in draft legislation:

Appealable grievances: Termination, demotion, suspension or layoff of more than forty working hours, involuntary transfer to another geographical location, allocation or reallocation of a position to a class and retaliation for participation in the state grievance and appeal process.

Standard of Review: The Board shall hear appeals, and enter such orders as it considers appropriate except the board may not reverse or modify an agency decision unless it finds that there is substantial evidence that the agency decision: (a) is unsupported by just cause; (b) is in violation of law; (c) is made without due process; or (d) is affected by harmful error in procedure established by state or agency policy.

Composition, Terms, Qualification of the Board: 1. The Grievance Appeals Board shall consist of three members appointed by the governor who shall designate one of the members as Chairman. Members of the Commission shall be citizens of the state known to have expertise in the field of personnel administration or employee relations.

2. No more than two members may belong to the same political party. No member may have held a position in a political party or been a candidate for an elected public office within four years preceding appointment. No member of the Board may be a state employee.

3. Members of the Board shall be appointed for staggered four year terms and may be removed from office by the governor for cause. All vacancies created by resignations prior to term expiration shall be filled by appointment for the unexpired term.

Rule Making Authority: The Board may adopt procedural rules necessary to carry out the purposes of this Act. Powers and duties of the Merit System Council shall be assumed by the Board. (The Merit System Council would be replaced by the Grievance Appeal Board.)

Funding, Staff, Administrative Attachment of the Board: The Board shall be allocated to the Department of Administration for administrative purposes only in accordance with the Executive Reorganization Act, 2-15-121, M.C.A., and shall hire its own staff. (One FTE to administer the program and ½ FTE clerical support is the anticipated staff required. As provided in the Executive Reorganization Act, a request for funds for this personnel, operating expenses and hearings expenses including compensation for hearings officers would be included in the Department of Administration budget.)

Eligible Employees: Employees covered by a collective bargaining agreement which establishes procedures for resolving an appealable issue may not appeal the issue to the Board.

Hearings Procedure: Within ten days of receipt of a final agency decision, a grievant may petition the Board for an evidentiary hearing of an appealable grievance.

Upon receipt of a petition or upon ruling that a grievance is appealable in case of dispute, the Board shall provide the grievant and respondent with the name of a hearings officer. Either party may strike the designated hearings officer once and request an alternate. The hearing shall be conducted by the unstruck hearings officer or a replacement appointed by the Chairman of the Board in the event the designated hearings officer is unable to preside. (A penalty provision for striking a local hearings officer may be added).

All proceedings under this Act shall be open to the public unless the presiding officer closes the meeting pursuant to the Open Meeting Law, 2-3-203, M.C.A. Notice of hearings shall be provided, hearings conducted and a proposed decision issued in accordance with part 6 of the Montana Administrative Procedures Act, 2-4-601 through 2-4-631, M.C.A.

The proposed decision and notification of the Board review date and the right of the parties to file exceptions and briefs and make oral arguments shall be served upon the parties within thirty days of completion of the hearing in accordance with 2-4-621, M.C.A.

If upon review of the proposed decision the agency director wishes to modify the agency decision in a manner acceptable to the grievant, the appeal shall be dismissed.

A decision by a majority of Board members is final and binding subject to judicial review of contested cases as provided by 2-4-701 through 2-4-711, M.C.A.

#### B. New Tentative Recommendations

1. Adopt legislation or administrative rules to require that the Board of Personnel Appeals provide both parties to an unfair labor practice case with a list of three hearings officers and permit each party to strike one. The hearing is then conducted by the unstruck hearings officer.



2. Amend the Collective Bargaining Act for nurses to permit employers to file unfair labor practice charges against the Nurse's Association and transfer jurisdiction over unfair labor practices involving nurses from District Court to the Board of Personnel Appeals.
3. Amend the statute establishing the Board of Personnel Appeals, 2-15-1705 M.C.A., to give the Board the authority to hire its own staff.
4. Increase legislative involvement in collective bargaining by:
  - (a) Administratively improving executive/legislative branch communications concerning collective bargaining through the following measures:
    - (1) Department of Administration provision of early and periodic briefings on the conduct and progress of collective bargaining to: (a) House & Senate leadership, (b) a select committee like the Select Committee on State employee pay, (c) an interim legislative committee, (d) an existing statutory or permanent legislative committee such as the Legislative Finance Committee.

Briefings would consist of: (a) Prerenegotiation: The broad parameters set for negotiations, anticipated collective bargaining issues, (b) During negotiations: Brief summary of the status of offers and counteroffers; "substantial charges" under discussion regarding wages, employee benefits, personnel management and contract provisions with program policy implications, (c) Presession: Negotiated settlements; unresolved issues; progress to date: the fiscal ramifications of proposed settlements and the draft pay plan bill.

(2) Earlier introduction of the State employee pay bill.

(3) The joint establishment by Office of the Legislative Fiscal Analyst/Office of Budget and Program Planning/Department of Administration of a reliable system to calculate the cost of the negotiated settlements and the State employee pay plan in a manner that can be independently verified by all parties.

- (b) Submitting draft legislation (without Commission-recommendation) for the legislature's consideration which would establish a legislative standing committee authorized to require pre-acceptance and pre-offer consultation by executive branch negotiators and to ratify negotiated agreements prior to submission to the full legislature.
- 5. Administratively move toward a single pre-budget negotiation session for all items (both economic and non-economic items).

## FOLLOW-UP ACTION

<u>TASK</u>	<u>WHO</u>	<u>WHEN</u>
Prepare minority report reflecting the views of those Commissioners opposed to creating a new grievance board.	Commission Staff	In final report
Report on the Board of Personnel Appeals decision on proposed administrative rules permitting each party to an unfair labor practice charge to strike one of three possible hearings officers.	BPA or Commission Staff	July meeting
Prepare draft legislation implementing changes to the Collective Bargaining Act for Nurses Act as agreed to by the Montana Nurses' Assn.	Commission Staff	July meeting
Draft legislation giving the BPA authority to hire its own staff	Commission Staff	July meeting
Prepare draft legislation establishing a legislative committee authorized to require pre-acceptance and pre-offer consultation by executive branch negotiators after the Wisconsin model for presentation to the 1985 Legislature.	Commission Staff	July meeting
Prepare decision trees on Classification and Pay and Increased Productivity Through Improved Employee Recruitment, Selection and Training Programs.	Commission Staff	July meeting
Resubmit draft legislation corrected at the June meeting to the Legislative Council for re-printing.	Commission Staff	July meeting

